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THE FUTURE OF REPRESENTATIVE GOVERNMENT

Mr. Chairman, Fellow-Members of the American Political Science Association, Ladies and Gentlemen:

In the United States we have seen a revival of the ancient discussion concerning the line of demarcation between national and State authority under our complex federal system, but there is an underlying question which cannot have escaped the thoughtful observer involved in the growing popular distrust of the representative system whereon both federal and State governments are based. This tendency is being manifested in very material modifications in representative government, as understood by the founders of our government, and I therefore ask your attention to the consideration of The Future of Representative Government.

This form of government, wherein the sovereign power of lawmaking is wholly delegated to deputies elected by the people, is of comparatively modern origin, and in the modern sense of the term it was unknown to the ancients. While its origin is obscure, we know that it was in England that representative government found its development in the form in which it was so greatly impressed upon the framers of our Constitution. Sir Henry Maine in his *Popular Government* says that it was virtually England's discovery of government by representation which caused parliamentary institutions to be preserved

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in England from the destruction which overtook them everywhere else, and to devolve as an inheritance upon the United States.

Rousseau, whose influence was so profound upon the active spirits of the French Revolution, declaimed against any delegation by representation of the powers of the people. He required in his policy that the entire community should meet periodically to exercise its sovereignty, and he therefore deemed popular government impossible except in a restricted territory. Mr. Jefferson thought that the New England town meeting was the nearest approach to a popular government, but he doubted that it would be practicable beyond the limits of a New England town meeting.

While representative government was assumed by the founders of our government to be the only possible basis of government over an extended territory, they did not entertain the view of Rousseau that a pure democracy was an ideally perfect government, and that representation would be merely a means of securing an expression of the average intelligence in legislation. On the contrary, they deemed that the ideally perfect government was that in which the intelligence of the community, the fittest men, should be selected, that is, the selectmen were to be secured by this means for the purpose of administering the government.

This was the conception of representative government expressed in the profound analysis of John Stuart Mill, who declared that the ideally perfect government must be representative, and thus those competent to govern would be selected for that purpose by their fellow men in a true representative system. Guizot says, "What we call representation is nothing else but the means to arrive at the result. It is not an arithmetical means employed to count individual wills, but a natural process by which public reason, which alone has a right to govern society, may be extracted from the bosom of society itself."

REPRESENTATION IN THE FEDERAL GOVERNMENT

Representation was established in the United States in the creation of our federal government, not only because it was deemed the only means by which popular government could be maintained over any extended territory, but also because it was believed that it was the only means by which the requisite intelligence and wisdom for

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legislation could be selected by the people. The all but universal system of American constitutional law rests upon the same framework of government—an executive with a bicameral legislature and this has been adopted not only in our States, but in many of our city charters. The framers of our Federal Constitution were so profoundly impressed with the necessity of deliberate selection in representation that they adopted the system of double representation in the election of the president and also of the senators. These provisions were believed by the founders to be of the most lasting importance in securing a wise deliberation in these selections. Hamilton predicted that this method of electing the president afforded a moral certainty that the office of president would seldom fall to a man who was not endowed in an eminent degree with the requisite qualifications.

The generation of the founders had hardly passed away before the electoral scheme for the selection of the president, so carefully devised, was undermined by public opinion, and the intention of the Constitution framers was completely defeated. The electors for nearly a century have been nominated and selected for the sole purpose of giving the vote of the State to a certain party candidate, and they are as securely bound by custom and honor so to vote as they would be by statute. The electoral college has become a mere voting machine, and the president himself may be selected by a convention of the dominant party, as the result of a deal or a stampede, a result that the framers of the Constitution thought they had effectually prevented by their precautions.

The indirect choice in the election of senators by the State legislatures has lasted longer. This double representation attracted the admiration of Tocqueville (chapter xiii), when he visited this country during the administration of Jackson, and he thought that this plan of election would have to be introduced more frequently into our system, or we should incur no small risk of perishing miserably on the shoals of democracy. Sir Henry Maine[1] in 1886 thought that the great source of the power of the senate was this method of their election by the legislatures of the several States.

The democratic trend was first observable as to the senators in the

[1] *Popular Government*, p. 227.

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demand, sometimes acquiesced in and sometimes resisted, that they should obey the instructions of their States. For some years past there has been a demand for the amendment of the Constitution so as to provide for popular election of senators. This has proved unavailing, and a scheme is now being adopted which bids fair to defeat the plan of the Constitution as effectually in the case of senators as in the case of presidential electors. Not infrequently candidates for the senate have been nominated by the State conventions of respective parties and members of the legislature have been bound in honor to vote for the party choice so declared. Recent legislation in some of the States has attempted to give a legal sanction to this evasion, by providing that candidates for each political party for United States senate be placed on the ballot at the general election, and that the persons having the largest number of votes upon the respective party tickets be the caucus nominees of the respective parties in the legislatures. Such an enactment can obviously be effective only in the acquiescence of the members, but public opinion which has so effectually controlled the election of the electors may be equally effective in controlling the election of the United States senators, thus again clearly defeating the express purpose of the Constitution.

REPRESENTATIVE GOVERNMENT IN THE FEDERAL CONGRESS

Representative government in the true sense implies government by discussion, and it is therefore obvious that there can be no true representative government when the pressure of legislative business, or the character of the membership renders government by discussion impracticable. The term of service of members of the house of representatives of the national congress is but two years, and under the practice of rotation prevailing generally through the country, the percentage of new and inexperienced members constitutes a very large proportion of the total. A tremendous pressure of business with this large, unwieldy, and generally inexperienced membership has compelled a concentration of arbitrary power in the speaker and committee on rules, in order to secure the dispatch of the necessary public business. The system has been aptly termed one of "hierarchical and centralized power," which each party in turn is compelled to adopt when in power, however much it may condemn it when in

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opposition. These peculiar conditions in the membership and business of congress make this concentration of power in the speaker and rules committee more essential and more frequent than in the State legislatures, but the limited short terms of the State legislators prescribed by State constitutions are tending to produce the same result.

STATE CONSTITUTIONS

It is however in the case of our State legislatures which unlike congress are vested with sovereign power, as direct representatives of the people of the State, subject only to the limitations of the federal and State constitutions, that we find clearly marked this decline of the representative system in popular favor. The radical change in our State constitutions has been the subject of frequent comment in addresses before this association. The constitutions adopted during the last thirty years are no longer modeled after the Constitution of the United States in setting forth fundamental principles of government in concise and comprehensive terms, but they have become in effect codes of laws full of restraints, regulations, and prohibitions on the exercise of the legislative will. The latest illustration of these constitutional developments is in the case of Oklahoma, the most recent addition to our sisterhood of States, where the constitution contains twenty-four articles, three hundred fifty-eight sections and exclusive of specifications of county boundaries, over fifty pages of closely printed matter.

One of the most important provisions in our modern constitutions in the restraint of the legislative power, that of the substitution of general for special legislation, does not so much proceed from distrust of the legislature as it is necessitated by the changed conditions of our complex modern civilization multiplying the subjects which demand legislation. In some States the constitution declares that the applicability of a general law shall be a judicial and not a legislative question, that is, that it shall be for the courts and not for the legislature to determine when a special law is admissible. The most important instance of this substitution of general for special legislation is in the enactments of general corporation laws in place of grants of special charters to corporations. In the very prevalent adoption

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of the corporate form for modern business, it is obvious that the system of special charters would have been intolerable.

Despite these constitutional provisions for the limitation of special and local legislation, it cannot be altogether prohibited, and the flood of such enactments is one of the most characteristic features of American legislation.

Prominent among the provisions of our modern constitutions restraining the legislative power are those defining and limiting the exercise of the taxing power. Not only do they limit the tax rate both in State and local taxation, but in a majority of the States the attempted enforcement of the system of a uniform tax for all kinds of property in the same manner under the so-called general property tax effectually prevents classification for taxation, precludes efficiency and produces an all but universal tax evasion. In this matter over restraint of the legislative power by constitutional restrictions has been the direct cause of the worst abuses of our American taxing system. It was said in a recent address by an eminent authority[2] that the constitutions of at least twenty-four States prevented the adoption of any sensible system of taxation. It should be noted, however, that Oklahoma which has made the most recent contribution to our State constitutions has avoided these errors, in wisely refraining from imposing restraint upon the general assembly which would impair the efficient exercise of the taxing power.

There is another class of constitutional provisions directly aimed not only at controlling the scope, but limiting and prescribing the form of legislation. Thus we have provisions prescribing the titles and forms of laws, original and amendatory, their successive readings on different days in each house, the vote by ayes and noes on final passage, and generally all the details of parliamentary procedure. We also have provisions substituting biennial for annual sessions. In two States the regular sessions are quadrennial; in some States the length of the biennial session is fixed at a prescribed number of days, usually sixty, and adjournment is then forced by reducing to a nominal sum the compensation of the members, if they sit after such day. The inevitable effect of these limited sessions is hasty legislation, often controlled

[2] Ambrose Purdy, of New York.

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and directed by special interests, and this ensures the depreciation of the legislative product. The haste with which our statutes are enacted under these circumstances necessarily contributes to the immense volume of litigation involving the validity of such statutes and their conformity to constitutional requirements, thus bringing into new importance the right of the judiciary to pass upon the conformity of statutes with the law of the Constitution, which has become so marked a principle of American constitutional law. Judicial annullment of statutes for non-conformity with constitutional requirements both as to substance and form has become increasingly frequent. The frequent invocation of the fourteenth amendment to the United States Constitution as a restraint upon the legislative power has had a profound effect upon our jurisprudence. The federal guarantee of the equal protection of the laws has come to be frequently applied both in the State and federal courts against forms of special legislation which are claimed to be illegitimate classification, as the guarantee of due process of law has been enforced against the exercise of the police power of the State.

This limitation of legislative authority is also directly associated with the increased power of the executive. There is a general tendency to increase the executive power, as in the enlarged power of veto, both in the matter of the exercise of veto after adjournment and in the right to veto specific items of appropriations. The executive or administrative branch of the administration is also represented by boards, commissions and departments. Thus, we have not only boards for the administration of public charities, and the like, but commissions such as railroad and warehouse commissions, public utilities commissions, which are vested to a certain extent with legislative and sometimes quasi-judicial powers. Thus, in effect, a new department of government has been established outside of the original division of executive, legislative, and judicial, and really enforced by the complicated conditions of our modern industrial civilization, and yet the inevitable effect is the diminished authority of the representative assembly in the legislature.

These detailed provisions in our new constitutions limiting the scope of the legislative power necessarily require frequent revision or amendment to conform the constitution to changed conditions. In some

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States where these constitutions exist hardly an election passes without the submission of one or more constitutional amendments to a vote of the people. In eight years 281 amendments to State constitutions have been submitted to the people of the different States and of these 168 were adopted and 113 defeated. In the State of Missouri fifteen amendments to the constitution have been adopted in the last fifteen years and six defeated, and eight amendments are now pending to be voted upon in the November election of 1908. Whether amendment or revision by constitutional amendment is resorted to, the necessary effect is to depreciate in public opinion the importance of the legislature.

It has been said[3] that when we subtract all these limitations of the legislative power, the question may then well arise, whether it will ultimately prove worth while to retain an expensive legislature to exercise its small and petty powers; and that a convention meeting periodically, with well supervised administrative departments, might perform all the legislative functions to entire satisfaction.

POPULAR DISTRUST

These conditions involving the depreciation of the legislative product lower the dignity of the legislative position. This lowered standard in the legislature and also in our legislators has in turn intensified the growing popular distrust of our representative system. The complexities of our modern life, the absorption of the best energies and talents of our people in commercial enterprises, the increasing proportion of urban as compared to rural population, the unceasing demands upon the time and attention of our legislatures of measures affecting private interests, the suspicion and even the disclosure of jobbery and of corruption, the control of legislative action through political organization, and the caucus eliminating discussion and stifling individual independence, have all been factors in intensifying this popular distrust of representation. Our citizens are realizing that the representation provided by our existing conditions is not true representation, and as they feel their inability to control these tendencies they are prepared to welcome any remedy.

[3] Prof. Dealey, in Am. Pol. Sci. Rev., Feb., 1907.

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THE REFERENDUM

The referendum which is now demanded as a remedy for the evils in our legislative system, is not new in our political system, as the reference to popular vote has been in use in many States in the form of constitutional amendments or charter amendments on tax and bond issues, local option, and the like. Direct legislation by the people through the initiative and referendum has been in force in Switzerland for a number of years, and the agitation for their introduction into this country in general legislation has only recently commenced. The initiative and referendum have been adopted in some form in the State constitutions of South Dakota, Utah, Oregon, Montana and Oklahoma, and constitutional amendments are now pending in the States of Maine, Missouri, and North Dakota. An agitation has been carried on for the advisory initiative and referendum in national affairs, and it is said that over one hundred members of the present house of representatives are pledged to vote therefor. No one can question the sincerity and patriotic earnestness of those who are seeking the adoption of this system. They claim that with the adoption of the referendum our political machines will become without their effective use, the trade of the politician will be rendered undesirable, and the power of the monopolists will be ended. Direct legislation, they say, will do away with class rule, ring rule, jobbery, extravagance, nepotism, the spoils system, and every jot of the politician's influence.

Experience does not warrant us in concluding that the ideal representative government can be restored by the substitution of the average public opinion for the deliberate representative judgment, in the initiation or decision of the details of legislation; but on the contrary it would tend to show that public indifference is uniformly manifested (in the absence of a single absorbing issue), when public measures are at issue, and not the personality of contending candidates. This apathy of the public when public measures and not the candidates are at issue may be discouraging to enthusiasts who anticipate political reform and direct progress through legislation by the people. It seems that the working of direct legislation under the initiative and referendum in Switzerland has been distinctly conservative and has tended to political stagnation rather than progress. Thus, Mr. Bryce

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says that its effect upon legislation is rather a bit and a bridle than a spur, and that while the people may be indifferent and apathetic, they cannot be lobbied or wheedled or bulldozed. The sober advocate of the referendum no longer claims that it will be a substitute for representative government, but that it will furnish an additional and needed restraint upon our legislative bodies. This suggests the inquiry whether under our system of constitutional limitations upon legislative authority we are in need of this additional curb. Mr. Lecky[4] distinctly recommends the referendum for England, but he writes from the standpoint of an Englishman, who sees the power of an omnipotent parliament with no constitutional restrictions, and he approves the referendum, because he says it would prove a powerful bulwark against violent changes. He recognizes that it is doubtful that the referendum would have ratified the toleration act of the seventeenth century, the abolition of capital punishment of witches in the eighteenth century or Catholic emancipation in the nineteenth century; but he says it would furnish a remedy under the English system of great growing evils which are difficult to cure, and would do so in a way which is in full accordance with the democratic spirit of the times. He cites the example of America in its effective constitutional restraints upon legislative action, and advocates the referendum in England because of the absence of such restraints. He admits that it would have the effect of lowering the authority of the house of commons, and thinks that would be one of its great virtues.

The referendum, therefore, may have its place in our political system as an *in terrorem* preventive, or even a corrective, but it cannot be a panacea for our legislative evils. It may be an effective method of ascertaining the controlling public opinion on simple and specific subjects wherein public interest may be aroused, and wherein the people may have an opinion before they are called upon to vote, and in protecting the local self-government of municipalities, particularly so in the grant of public franchises. In a great political crisis it may represent the sovereign will of the people, but its warmest friends must admit that it is not and cannot be a means of working out the necessary details of legislation. Great communities cannot be governed by

[4] *Democracy and Liberty*, chap. iii.

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permanent town meetings."[5] As Burke said of the right of revolution: "It is making the extreme medicine of the constitution its daily bread."

REGULATION OF THE LOBBY

Not the least of the causes of the popular distrust of our legislatures is the recognized abuse of lobbying, that is, the attempted influencing of members of the legislature in behalf of private interests. The growth of corporations, which are the creation of and are dependent upon the State, has had a tremendous influence in developing this evil in our representative system, although it has been to some extent reduced by the substitution of general for special legislation. The American legislature however despite constitutional restraints has enormous undefined police power, which may adversely affect in its exercise the interests and fortunes of individuals as well as corporations. Oftentimes we hear of business men looking with apprehension upon the meeting of the legislature; that they are relieved and breathe more freely when the sessions are ended.

The lobby has become known as the third house in American legislatures, and its abuses have been the subject of extensive public comment and denunciation. The evil is closely associated with the abuses of party management, as the chiefs of the lobby are not infrequently the bosses of the party organization, who may control the political futures of the legislators. Efforts have been made to remedy this abuse both in congress and in many of the State legislatures. Illegitimate lobbying has in some States been declared a felony, and anti-lobbying bills have been enacted requiring legislative advocates to be registered with the secretary of state. There is an obvious difficulty in discriminating between legitimate and illegitimate legislative advocacy. Those whose interests are at stake have a right to appear and explain their views and defend their rights before their representatives. The legislators, in the nature of things, must be presumably ignorant of the matters which they are to vote upon and they must have information from some source.

In this connection, I must call attention to the very successful expedient adopted in this State, in the establishment of a department

[5] Prof. A. B. Hart in *New York Nation*, vol. 59, p. 193.

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of legislative research. This is a bureau for the assistance of legislators in the preparation of bills and in the investigation of subjects which are involved in measures pending before the legislature. It is the experience of every legislative session that hundreds of measures are submitted whereon even a body of experts could not be expected to pass intelligently. Many of these measures profoundly affect private interests which are represented by skilled advocates. This bureau of legislative research does not interfere with the legitimate legislative advocacy, but does afford the legislators the means of learning the experience of other States, and secures the necessary professional assistance with reference to any proposed subjects of legislation. This plan, which I may call the McCarthy plan, after the gentleman who was mainly responsible for the reform in this State, I regard as one of the most hopeful signs for the future of representative government.

STATE REGULATION OF PARTY ORGANIZATION

Maine says that party feeling is probably more a survival of the primitive combativeness of mankind than a consequence of political differences between man and man. We are shocked by the ferocity of partisan hostilities in ancient and mediaeval times, and Washington in his farewell address solemnly warned us against the abuses of party spirit. It is a significant fact however that in this country and in England two distinct party alignments have been continuously recognized in the practical conduct of the government, without the tendency to split into personal factions and political groups as in the continent of Europe.

Until recently these political organizations have been maintained by voluntary associations of the people, ignored by the statute law. Nominations for public office have been made through conventions, delegates whereto were selected by the party adherents, in mass meeting or primary elections, and thus the whole system was based upon the voluntary application of the principle of representation in city, county, and state. This theory of party organization operating through voluntary action on the principle of representation operates fairly well in rural districts, but necessarily breaks down in practice in crowded populations of our cities. From these conditions, the party

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committee, the caucus, and the party boss are a necessary evolution. Those who can afford to give the time and attention to the business and have the requisite fitness therefor, necessarily control the party machinery, and thus hold in their hands the nominations for public office, for whom the citizens of their respective parties are compelled to vote. Such conditions not only affect the government of the city, but in the crowded urban as compared with rural populations have a powerful if not dominant influence in the politics of the State. The relations of those thus in control of party machinery to those who are interested in legislation in public franchises and otherwise are too obvious to need recital.

As a result of these conditions public opinion has demanded public control and regulation of the machinery of party nominations. This was first effected through the regulation of party primaries. This proving inadequate, we have had a demand for what is known as direct primary laws, such as have been enacted in some of the States, and are being extensively considered in others. These laws, or at least some of them, abolish the principle of representation in nominations for offices and require candidates to be nominated at primary elections of the respective parties held under public regulations on the same day throughout the State.

The limits of this paper will not permit the discussion of the details of such legislation, but it is sufficient to call attention to its very serious bearing upon the principle of representation in our government. In lieu of the selection of candidates by their fellow citizens represented in conventions, we will now have only the voluntary office seekers who will be compelled, under this system, through themselves or through exertions made in their behalf, to exploit their respective claims for office. Whether the bosses will be eliminated more than temporarily in this new form of the selection of candidates is a matter of very grave doubt. If he is a natural evolution from the conditions of society, wherein the masses are so absorbed in the business of bread-winning that they cannot give attention to the business of the details of government, or the selection of candidates, all such legislation must necessarily be futile in the prevention of the influence of organized effort in controlling nominations for office.

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EXPENSE OF OFFICE SEEKING

In this connection it should be observed that this effort to dispense with the principle of representation in party nominations will necessarily add enormously to the expense of individual office seeking. The candidate must spend money to make himself known to the people, and either he must have the money himself, or someone else must furnish it for him. There is a large legitimate expenditure involved in the promotion of individual candidacy for public office, as well as in the advocacy of public measures before the people. In our busy industrial age, where we have practically no leisure class, the expenditure of time by or for any one, as a rule, costs money. The practically universal adoption of the public ballot printed at public expense is a partial recognition of this necessity. It is true that the line between legitimate and illegitimate expenditure is not always easily drawn, and the latter is not easily detected. The corrupt practice acts are a public recognition of the danger of the use of money in elections. The president of the United States in his recent message has impressively called attention to the necessary expense of conducting national party campaigns, and has suggested the propriety of public appropriation therefor. The competition of cities for the incidental advantages growing out of the holding of conventions therein has been made a means of providing funds for national political campaigns. Public opinion condemns and properly condemns the payment of such expenses, which are in themselves legitimate, by the corporate and other interests which may be dependent upon legislation. But apart from this expenditure incident to the maintenance of party organizations, there is a large legitimate expenditure connected with the individual candidacy for nomination for selection to public office. Unless the candidate is exceptionally prominent, he has little chance of nomination for a State or city office, much less for an election, unless the people are informed of his ambitions and his qualifications. The salary of a public office is as a rule based upon what is deemed a reasonable compensation for such service, and the terms of service in this country are comparatively short. It is obvious that the cost of candidacy is a very serious problem in connection with the future of representative government under these conditions.

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DECREASE OF ELECTIVE OFFICES AND MUNICIPAL REFORM

In this connection is suggested one of the most effective remedies for the existing difficulties in representative government, and that is in the decrease of the number of elective offices, both municipal and State. Mr. Bryce, the most thoughtful student of our political system, dwells upon this multiplication of elective offices, particularly in municipal government, as one of the most fruitful sources of the power of the caucus and the boss. He truly says that the effect is not to increase public control but to lessen it. Public control to be effective must be concentrated.

Where a long list of elective officials is set out upon the official ballot, it is obvious that the average voter must be dependent upon organization of some kind in making up his ballot. The necessity of reducing the number of elective offices, as an essential condition for the restoration of representative government, is peculiarly applicable in our cities. It is in the government of our cities that representative government has had its most conspicuous failure, and it is therefore clear that the future of representative government is closely connected with and indeed dependent upon reform in municipal administration. The first step in such reform is in the substitution of a business for a political control of the public service, that is civil service reform. It is in the abuse of the spoils system, which is so rampant in our municipal system, that the worst evils of party government, which have had so deplorable an effect upon the workings of our representative system, have had their source.

In connection with this reform in municipal representation should be noticed the novel and interesting feature known as the right of Recall, whereunder a given number of votes may require any official, municipal, legislative or executive, to submit his name as a candidate at a special election; and the result of such election determines the official's continuance in office.

In any effective reform, there must be a diminution in the number of elective offices, a public service on a business and not a party basis, and a reform of the representative system to make it truly representative of the people, thus insuring an effective popular control. It is a cheering fact that there is now so much intelligent interest in this

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subject of municipal reform, and this may properly be deemed a most hopeful augury for the future of true representative government.

PROPORTIONAL REPRESENTATION

The discussion of representative government would be incomplete without reference to proportional or minority representation. Mr. John Stuart Mill, while declaring that representative government was the ideal and best form of government, as that in which the sovereign or supreme control or power in the last resort is vested in the entire aggregate of the community, declared that representation was inadequate and incomplete and not truly representative without representation of the minority. The profound reasoning of Mr. Mill induced an extended discussion of proportional or minority representation some forty years since, and the cumulative or limited vote was extensively advocated and adopted in Illinois in the constitution of 1870 in the election of the legislature for that State. Public opinion apparently was not prepared for the innovation, or the measures proposed were inadequate, and it seems that further agitation has remained in abeyance until very recently, when it was revived in the prevailing discontent with our existing representative system.

Professor Commons in a recent thoughtful discussion of proportional representation deems it the legitimate and logical sequence of the referendum, and the reform of the public service. While many of the plans of proportional or minority representation are open to the objection of being too cumbersome for practical use, it cannot be denied that there is reason for the view that individual representation is inadequate for the complex condition of our great cities, and that the path of progress lies in the direction of some form of proportional or class representation.

THE ESSENTIALS OF A REPRESENTATIVE SYSTEM

Mr. Bryce in commenting upon our frame of government says that there are four essentials to the excellency of a representative system: first, the representatives should be chosen from among the best men of the country, and if possible from among its natural leaders; second, the representatives should be responsible to their constituents for their speeches and votes; third, they should have courage enough to resist

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the momentary impulse of their constituents which they think mischievous; and fourth, they should have a reflexive influence on the people in giving them the benefit of their experience and the superior knowledge they are presumed to possess.

He comments as do all foreign observers of our institutions upon our system of electing by districts, and of requiring by custom or law the residence of the representative within the district. The force of custom in this matter is shown in the fact that while the law does not require that a representative in congress should be a resident of the district which elects him, it very rarely happens in this country (and then only in the case of a large city) that the representative to congress is not a resident of his district. The absence of this restriction in Great Britain has enabled that country to maintain in public service and power some of its most eminent statesmen, when, in this country, they would have been permanently retired to private life, and the country would have lost the benefit of their services.

This review of the tendencies directly affecting our representative form of government clearly shows that the democratic trend of our times in its demands for direct popular control is in danger of defeating itself, in that some at least of the measures adopted tend towards making an effective popular control impossible, and that our attempts to correct the abuses of representation may only aggravate the evils from which we seek to escape. Thus the enforced shortening of legislative sessions, results in hasty and ill-considered legislation, numerous elective officials, and complicated election machinery make more essential the intervention of organization and the boss. The more we fetter and encumber the office with constitutional and other restraints, the less dignified and the less worthy of honorable ambition it becomes. The more we confine public office to the office-seeker the more we exclude the worthy citizen who would accept public office as an honor, but would not seek it by personal solicitation and at personal expense.

The very means by which we seek to secure direct and effective popular control, that is, in frequent elections and in numerous elective offices, directly tend to lessen that control. It has been said that the root of corrupt politics and machine rule is in frequent elections and short terms, and that the American people have been so dissatisfied

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with their law-making bodies, that they are persistently depriving them of power, because they are unrepresentative and inefficient. While there is a measure of truth in this, it is also true that the inefficiency of our representatives is in a measure the result of the conditions rather than a cause of them. The more we depreciate the office of representative by our constitutional and other restraints, the less attractive we make the office for men who are worthy to receive it.

Without going into the details of any projected scheme of proportional or class representation, it must be conceded that we must make our system of representation more truly representative to meet the changed conditions of our times. In the last analysis, however, whatever our devices for improving the form of representative government, and facilitating the expression of popular will in the selection of qualified representatives, we fall back upon the trite yet never-to-be-forgotten maxim that popular government cannot run itself, and can only exist when there is a public opinion willing to make the necessary sacrifices of time and trouble for its maintenance. Representative government implies that the citizens are capable of the self-sacrifices involved in giving the requisite time and attention to the selection of the fittest men for public office. Citizenship in a representative government has its duties as well as its rights. We cannot insist upon the latter while neglecting the former.

Not the least of the causes of the decline in the character of our representative assemblies, certainly in our cities, is in the intense commercialism of our time, and the absorption of our citizens in the demands of professional or business life. While this tendency may be remedied in part by improvement in governmental methods and in facilitating the expression of public opinion, the effective and permanent cure must be found in the development of the public spirit, which is willing to make the necessary sacrifices of popular government. Without it all efforts for administrative reform are in vain. The civilized world is now watching with interest the struggle for representative government, where heretofore from the dawn of history autocracy has had an undisputed sway. It is for this country to show that the hopes and anticipations of the founders of our government will be realized through the only means whereby self-government can be preserved over an extended territory, and that is by true representative government.

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In this presence, assembled as we are in the halls of this great university, where valued contributions have been made to the solution of these weighty problems, we cannot but be hopeful for the future of representative government. In this and the other institutions of learning lie the mightiest forces, whereby the self-government of the American people will be triumphantly vindicated. *Si testimonium quaeris, circumspice.*

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FAILURES AND SUCCESSES AT THE SECOND HAGUE CONFERENCE

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It is inevitable that any undertaking should be judged primarily from the point of view of what was originally attempted by the participants and expected by onlookers rather than by a strict standard of actual achievement. In most of the unfavorable discussion that has been current during and since the conference, the point of criticism is the opinion that the conference has not fulfilled its avowed purpose, rather than a complete denial of the usefulness of such results as actually have been accomplished. At the very opening session of the conference, M. Nelidoff in his presidential address pointed out in disillusioned language the impossibility of realizing certain general ideals that had been entertained with respect to these great meetings. He admitted that "we need not be discouraged from dreaming of the ideal of universal peace and the fraternity of peoples, considering that the essential condition of all progress is the pursuit of an ideal towards which we always strive without ever reaching it. Nevertheless, we should not be too ambitious." He concluded by saying: "Let us set bravely to work, our path lit up by the bright star of universal peace which we shall never reach but which will always guide us." While some among M. Nelidoff's audience approved of his cautious conservatism, others felt that his utterances had received an unduly pessimistic tinge from the unfortunate position in which Russia has found herself since the war. Nevertheless, when we now review the efforts and the accomplished work of the conference, we may take as the keynote, the words of the presiding officer, pointing out inevitable limitations and bidding us look for results not in sweeping resolutions, but in detailed and specific arrangements which at first sight may appear somewhat trivial and of a purely technical nature.

The first conference, though avowedly called for the purpose of devising means for a limitation of armaments, had contented itself

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with a resolution declaring the desirability of such action and recommending the "study" of its feasibility. It was held by the governments of Great Britain and the United States that the entirely platonic manner in which the subject was disposed of by the first conference imposed upon its successor the necessity of taking up this important matter for further discussion with a view to united action. From the first, the governments of continental Europe opposed the inclusion of this topic in the program. They interpreted the solicitude of Great Britain in behalf of the principle of limitation, entirely in the light of the unquestioned supremacy of the British fleet, and attributed to Great Britain a desire to render this superiority permanent by keeping armaments substantially at their present relative strength. The position in which Russia found herself after the war had served to change the views of her statesmen on the question of disarmament. Notwithstanding these discouragements, the British and American delegations felt that, at a conference avowedly called for the purpose of advancing peace, it would be stultifying not to make at least an effort in behalf of the direct establishment of a more stable foundation for pacific relations. The original attitude of the continental powers upon this question was, however, strictly maintained, so that it was possible in the end to pass only a most innocuous resolution. As originally introduced, the British resolution contained the statement that the question of the limitation of armaments "is more than ever urgent." Even this apparently innocent phrase was objected to by the opposition, who claimed that it was by no means certain whether a greater urgency existed in this matter than ever before. The phrase in question was consequently omitted from the final draft, in which the conference simply declares "that it is highly desirable that the governments should resume the serious study of this question." The impressiveness of the session, in the course of which Sir Edward Frye delivered his speech introducing this resolution, and other prominent delegates made formal declarations, could not conceal the fact that the resolution simply records a complete failure of hopes that had been entertained. In all its impressive ceremonial this session resembled rather a state funeral than a legislative proceeding.

Closely allied with the problem thus disposed of was the general question of compulsory arbitration. In view of the treaties concluded

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between various powers since the last conference, in which it is agreed that certain classes of controversies or claims are to be submitted as a matter of course to the Hague tribunal, it was believed by those who favored the extension of the principle of arbitration that a general convention might be adopted making arbitration of certain disputes the regular method of procedure. It was at first attempted by the commission charged with this matter, to agree upon a list of subjects for obligatory arbitration, but progress made in this direction was not very encouraging. Certain powers, for instance Germany, expressed a conviction that the time was not yet ripe for the institution of a general system of obligatory arbitration. When finally the committee took a definite vote upon the different subjects which had been submitted, only the following eight received a majority of the votes in committee: measurement of the draught of ships; wages and effects of deceased seamen; international protection of labor; prevention of collisions at sea; protection of literary and artistic works; weights and measures; relief of indigent sick persons; and the measure of damages in cases where liability is admitted. The original proposal, which had been worked out by Portugal and which was acceptable to Great Britain and the United States, included all those international interests concerning which permanent conventions have been formed among a large number of nations, such as patents and copyrights, sanitation, extradition, diplomatic privileges, commercial, postal and telegraphic intercourse, in addition to the subjects finally acted upon by the committee. The ultimate precipitate resulting from all this discussion and negotiation was so insignificant as to render further efforts along this line inadvisable lest the entire subject be rendered ridiculous before the world. The committee consequently turned its attention to the plan suggested by Great Britain and the United States, which contemplated the establishment of a register upon which the treaty powers might signify those subjects which they would agree to submit to arbitration. In other words, the Hague court would provide a legal blank to be filled out by the treaty powers. Even this entirely formalized proposal did not commend itself to such nations as Germany, Austria, Russia, Japan and Turkey. It may be noted that the efficiency of the initiative of the American delegation, in this matter, was necessarily impaired by the manner in which the senate had obstructed the conclusion of arbitration treaties by the United States.

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In one important respect, however, the cause of obligatory arbitration was materially advanced—in connection with the problem whether the employment of force should be held admissable in the collection of the public debts owed by any state. This question had been answered in a negative sense by such jurists as Calvo and Señor Drago of Argentina. But by no means all the South American powers, now for the first time represented at the conferences, were in favor of the enunciation of such a principle, as they feared that it might impair the credit of South American governments generally. The solution advocated by the American delegation was that the use of force in the collection of the contractual debts of a state should not be permissible unless the debtor state should reject an offer of arbitration, or make the decision of the case impossible, or after arbitration fail to conform to the verdict of the court. This solution was adopted by the conference, though seven powers made certain reservations. The result was not acceptable to Señor Drago himself, who expressed the opinion that the American proposal committed a mistake in legalizing war as a process for the collection of debts, in the last resort.

As the most striking achievement of the first conference had been the establishment of a permanent tribunal, it was to be expected that the second conference would attempt in some way to perfect the organization of the international union. Among the ideas that had been advanced by such bodies as the Inter-Parliamentary Union, were the reconstruction of the Hague tribunal and the regular periodicity of conferences. The attempts to secure the latter end were successful only in so far that the conference pronounced itself in favor of calling a third conference within eight years. A number of delegations, including those of Great Britain and America, favored the establishment of a regular period for the convening of future conferences, together with an arrangement for their automatic convocation through the Hague office. The resolution which was actually introduced and moved by the president of the Russian delegation and of the conference, M. Nelidoff, however, simply provided for the calling of a conference within eight years. When this resolution, unsatisfactory though it was to many of the delegations, had been voted in the absence of any better arrangement, the members of the conference were surprised by the announcement of the Roumanian delegate that as the resolu-

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tion had not mentioned in whom was to be reposed the trust and duty of calling together the next conference, it was of course to be assumed that this honorable function was to be performed by the monarch who was through his past action most prominently identified with the conference. This method disposed of the attempts that had been made to give the conference a more independent constitution and greater regularity of meeting.

The proposal for a permanent court of arbitration, made and supported by the delegation of the United States, fared even worse, as, after much discussion and intricate negotiation, it led to absolutely no result. The main argument in favor of the constitution of a standing tribunal was that the present arrangement by which a tribunal is constituted out of the general panel furnished by the treaty states, for each particular case as it arises, involves a great amount of special negotiation and also entails heavy expenditure. A salaried court, permanently in session, open at all times to complainants, would afford a great encouragement to the use of the arbitral procedure. While other proposals of the conference were wrecked by the opposition of strong powers, the American scheme, almost within reach of success, was undone by technical difficulties which alienated the support of the lesser states. According to the American plan, the court was to be composed of fifteen permanent judges. The first-class powers were to have each one judge, the other judges to be divided among the lesser nations, which were classified according to their relative importance. This immediately aroused opposition, and Señor Barbosa of Brazil, in a long speech, protested against any system which would involve a formal ranking of powers in several classes. It ultimately proved impossible to find a system of rotation which would satisfy all, and thus failed a plan which promised the most satisfying results.

As with respect to arbitration the general principle had to be abandoned, while a distinct step in advance was taken in the matter of contractual debts, so in the case of the tribunal, a more specific proposal was successful. At the very first session of the conference, Germany presented a proposal for an international court of appeals to adjudicate upon prizes. A counter-proposal differing in important details was presented by Great Britain. The British plan provided for the representation upon the tribunal of each of the contestants,

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whereas the German proposal aimed at the establishment of a permanent personnel. The difficulties encountered were great both in detail and in general principle. It was argued that as hitherto the prize law has been administered by national courts and has been given a specific character in each national jurisdiction, there exists no body of rules universally acknowledged which could be administered by such a general court. The conference, however, undoubtedly felt that amidst all the wreckage it was necessary to achieve some positive results, and as two great powers, Germany and England, had united in proposing this particular measure, although in different forms, its success was ultimately assured. The difficulty raised by the non-existence of a body of international rules on prizes which could be administered by the new court was met by the conference by providing that the court should base its decisions: (*a*) upon conventions between the parties; (*b*) failing conventions, upon the rules of international law; (*c*) if rules generally recognized do not exist, upon the principles of justice and equity. Through this enactment, the court is virtually entrusted with the power to develop an international law of prizes. The court is to be composed of fifteen members, but it is provided that a power shall always be entitled to one representative upon the bench during the trial of a case in which it may be directly interested. The gift which the conference had made to the world, was however, accompanied by the condition that the court should not be constituted before a conference of maritime experts, representing the treaty powers, had been held for the further discussion and regulation of its functions.

The matters which we have thus far considered and upon which the attention of the world was principally focused during the earlier part of the session, were entrusted to the first commission under the presidency of M. Leon Bourgeois. The failure of the more far-reaching of these plans is not to be attributed to any inefficiency or lack of zeal upon the part of the supporting delegations, but to the insurmountable difficulties which presented themselves in connection with the establishment of any general institutions the full scope and bearing of which could not be entirely gauged by every power concerned.

The remaining work of the conference—that concerned with the laws of war—was distributed among three commissions, the second dealing with land warfare, the third with warfare on the sea and the

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fourth with the juridical relations incident to the latter. The respective chairmen of these committees were M. Beernaert, Count Tornielli, and M. F. de Martens. The Russian delegation consequently enjoyed not only the distinction and influence incident to the presidential office, but also the chairmanship of the commission in which eventually the most serious problems were considered and voted upon. As, in addition to this, a Russian delegate, M. Prosor, acted as head of the committee on redaction, the management of the conference was practically in the hands of the Russian diplomats.

The subject which caused the greatest amount of controversy in the fourth commission was the exemption of private property from seizure in maritime war. The traditional policy of the government of the United States favoring the complete exemption from seizure of all private property not contraband had been reasserted in a resolution passed by congress in the course of the Japanese war. It therefore became one of the duties of the American delegation to propose and favor a declaration to this end. The position of the United States in this matter is inspired by the general ideals which have governed the development of the laws of war within the last century; especially by the tendency to distinguish more and more between belligerents and non-combatants, and to confine the direct burden of war as much as possible to the former. Though in the processes of war it is inevitable that non-combatants shall be indirectly injured, it is considered inadvisable to uphold a practice in which their property rights are directly attacked, with a purpose of harassing the combatant state. Against these arguments, those delegations who under the lead of Great Britain opposed the exemption of private property from seizure, urged that to abolish the practice would be to free the combatant nation from the economic consequences of war and thereby to yield up one of the strongest preventatives against warlike undertakings. As the method of seizure, while most effective in weakening the power of an opponent, is a bloodless way of carrying on war, it was characterized as strictly humane in its operations and consequences. It became apparent early in the course of the conference that it would be impossible to establish the American contention, on account of the importance of the powers opposed to this view. The American delegation, however, succeeded in securing a vote of twenty-one against eleven for its proposal, in the

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fourth commission. The principal powers supporting it were the countries composing the Triple Alliance, while the British view was upheld by France, Russia, and Japan.

Immediately upon the original announcement of the American position in this matter, the British delegation made the startling counter-proposal to abolish entirely the principle of contraband of war and thus to free neutral trade absolutely from all interference by the belligerents, except as far as effective blockades are concerned. The British suggestion was so radical that by many it was interpreted as an attempt to throw the entire discussion of the exemption of private property into confusion and to prevent any action upon that principle. The plan advocated by the British delegation contemplated that while a belligerent state should have the right to seize the private property of its enemy whether contraband or not, no property whatever should henceforth be seizable by way of contraband as being destined for warlike uses by either belligerent. As a basis for the British position, it was advanced that the law of contraband was so unsettled, especially in regard to conditional contraband, that dangerous friction between neutrals and belligerents could never be avoided in a war, as long as seizures were made under this head. Consequently it would be preferable to sweep away the entire rules of contraband and to allow neutrals freely to supply any war materials to belligerents without risk of capture, except in cases of interference with an effective blockade. The opponents of the British view called attention to the danger of encouraging the supply of war materials to such an extent as to bring about frequent cases of virtual interference. Startling as the British proposal appears at first sight, it may be explained from the point of view of national policy. As Great Britain, through her strong navy, is in a position to inflict great harm on her opponent by confiscating the sea traffic of the latter, the abolition of the right of seizure would be a distinct disadvantage to her in time of war. The principle of contraband, however, gives her no similar advantage since most of the nations who might eventually become enemies of Great Britain, being situated on the continent of Europe, could be supplied with contraband goods by way of their land frontier without ever coming within reach of British seizure, whereas all war material imported by Great Britain would have to run the risk of maritime passage. The policy

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of Great Britain was, as a matter of fact, very shrewdly conceived. By making a counter-proposal apparently so liberal towards neutral powers, she opposed a most effectual barrier to the American plan. For once, quite contrary to her traditional policy, she could assume the character of a defender of neutral rights and therefore could be assured of the support of the lesser powers, who have no desire to become involved in warfare. As a matter of fact, her proposal was carried in committee against the opposition of but five powers. But as these five included the United States, Germany, Russia and France, the majority of twenty-five delegations in favor of the principle was just as powerless to establish it or even to warrant its submission to the general conference, as had been the majority of twenty-one to eleven in the matter of the exemption of private property. These commission votes indicate most strikingly the distance which separates the conference from a legislative body. Against the active opposition of even one of the first-class powers, it would be inadvisable to attempt any important action. After the failure to establish the general principle, the fourth commission continued its efforts, now favored especially by the American and German delegations, to give a stricter definition to the term "contraband," but it again proved impossible to arrive at any agreement on this point.

In the discussions of more specific rules of warfare and of the obligations of neutrals, the experience of the late war between Russia and Japan exercised a guiding influence. It was even hinted that Russia, the power which had fixed the program, evidently intended to give a retrospective sanction to some of its actions the legality of which had been seriously questioned at the time, and, in one instance, to place the stigma of lawlessness upon the action of Japan. The questions which had thus been emphasized by recent events were those connected with formalities at the opening of war, the use of neutral ports by belligerents, the transformation of merchantmen into war-vessels on the high seas, and the disposal of prizes.

It was agreed upon by the conference that hostilities should not begin unless there had been a declaration of war, or unless an ultimatum had been issued containing a conditional declaration. Under these provisions, as they stand, the declaration need not precede the beginning of hostilities by any fixed time, and the requirement is,

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in fact, purely formal. Of greater practical importance is the provision that notice of the commencement of war shall be immediately given to neutrals, and that, as far as their rights are involved, the state of war shall be held to commence from the date of notification. In this manner, neutral shipping will be more effectually protected than in the past, when the actual time of the beginning of war was often a question of dispute upon which depended the status of neutral property.

The rights and duties of neutrals with respect to belligerents formed the subject of long and careful consideration upon the part of the fourth commission. Great Britain was disposed to take a very strict view of the duties of neutrals with respect to belligerent vessels which may come to their ports. As the action of Russian ships in French ports during the late war has been interpreted as a virtual breach of neutrality, Russia was especially anxious to have a broad interpretation given to the rights of belligerents in the use of neutral hospitality. A similar view was taken by Germany and other powers which are without extensive facilities for the coaling and revictualling of a fleet. The rules which were ultimately laid down did not pass beyond a minimum which had for some time past been generally accepted; they cannot be said to constitute an advance in this branch of international law, but rather a fortification of the more conservative views as to the duties of neutrals. Thus it was provided that belligerent ships may revictual in neutral ports but only to the extent of completing their normal supplies in time of peace. They may also take in as much coal as is necessary to fill their ordinary bunkers. The normal period of stay in a port is not to exceed twenty-four hours. This stay may, however, be prolonged for another like period if coal cannot be received immediately under the local regulations. Moreover, all these rules are to apply only "in default of other special dispositions in the legislation of the neutral state." Although the committee had given this convention its innocuous form largely to please Russia, nevertheless the Russian delegation accepted it with a reservation directed against the limitation of the stay of vessels in neutral ports—the only fairly specific provision contained in the document.

The transformation of merchantmen into war-vessels on the high seas or in neutral ports was opposed by Great Britain on the ground

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that should such a practice become general, it would amount to a revival of privateering. The British delegation declared specifically that Great Britain will continue to regard merchantmen converted on the high seas as possessing no claim to the rights and privileges of belligerents. The fourth committee voted by nine to seven in favor of the British principle. After announcing this vote, the chairman, M. de Martens, took the step of announcing that notwithstanding any such vote, the practice of converting merchantmen was still lawful and might legitimately be continued by powers who considered it right. On account of the active opposition to the British proposal, it became impossible to pass a general rule prohibiting the practice of conversion. The British naval representative, Captain Ottley, consequently made an effort to secure the passage of rules which should limit the freedom of this practice. In this he was at least partially successful. It was enacted that converted merchantmen shall be placed under the direct authority of the state whose flag they carry, and that they shall be under the command of naval officers, with their crews submitted to naval discipline. Such ships must conform to the laws and customs of war, and notice of their conversion must be given to the world. The opposition of Russia and Germany to the British view in this matter was due to the fact that they desire to neutralize the great advantage bestowed upon England by her ready access to the sea. Russia especially is chafing under the restrictions with respect to the passage of the Dardanelles. It has been her practice to play fast and loose with the character of vessels sent through these straits by her in time of war. The powers opposed to the British position went so far as to attempt the establishment of a rule permitting the conversion of merchantmen in neutral ports.

No subject of discussion created more serious irritation between leading countries than the regulation of submarine mines. Great Britain insisted upon a very strict control of the use of these destructive engines of war. The British proposal provided first of all for a limitation of the area within which such mines could be laid, restricting it to the immediate vicinity of naval operations. It also demanded stringent precautions with respect to floating as well as anchored mines. Great Britain was opposed in this matter not only by Germany, but by Russia, France, and the United States. The position

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which these powers took was that the use of submarine mines was not yet sufficiently known or developed to be made the subject of international legislation. The political interests involved are of course readily apparent. Destructive warfare by the use of mines is relatively inexpensive, and connected with moderate risk to the user. It endangers chiefly the state having the most expensive navy and the greatest number of powerful fighting units. The continental states, whose policy it is to discount the maritime preponderance of Great Britain, were reluctant to fetter themselves in the use of this most formidable method of warfare, while on the other hand, the British delegation strongly insisted upon the terrible risks involved to non-combatants and neutrals. The final solution was extremely unsatisfactory to Great Britain. While it was provided that there should be no employment of floating mines which should not become innocuous within an hour after having been launched, nor of anchored mines which should not lose their destructive power as soon as they have broken their moorings, the efforts of Great Britain to limit the area within which these engines could be employed, was not successful. Indeed, it was forbidden to place mines off the coasts and ports of an enemy "with the sole object of intercepting mercantile navigation," but as pointed out, this is a merely subjective restriction. In the course of the negotiations, Germany offered to agree to the total prohibition of unanchored mines for a period of five years, but she was not willing to make any concessions as to the right of invading the maritime districts of the enemy. An attempted compromise according to which it was to be permitted to employ mines on the high seas within the immediate sphere of hostile activity, on condition that the mines should become innocuous two hours after having been abandoned, failed of adoption because it was objected to by both of the main contending parties. As the action of the commission in this matter was full of confusion, the various resolutions were entrusted for redaction to a small committee headed by M. Streit. The form given to the resolutions in this committee was distinctly displeasing to Great Britain. When the convention thus prepared had finally been voted by the conference in plenary session, Sir Ernest Satow, on behalf of the British delegates, took occasion to make a special declaration stating that the British delegation, while voting for this convention in default of a better measure, by no means

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admitted that the rules of international justice had been adequately stated. He was immediately followed by Baron Marschall von Bieberstein, who asserted that it would be unwise to rely too much upon laws and treaties for the regulation of warlike activities; but that confidence must be placed in the sense of honor and duty of the military and naval officers in charge of such operations. He concluded by distinctly repudiating any implication that his country was animated by humanitarian principles and aims to a less degree than any other power.

A review of the results of the work at The Hague shows plainly that the conference cannot as yet be looked upon as a world legislature, a "parliament of man." It is still merely a diplomatic conference in which powerful interests are contending for tactical advantage. In his closing address, M. Nelidoff said, "The delegates were not sent to The Hague to find ideal solutions of the various problems discussed, but to carry out the instructions received from their governments, in the interests of their respective countries." In other words, the dominant point of view as yet is not that of internationalism, of the common interests of civilized humanity, but of the national policies which the several delegations are seeking to advance, of national interests for which they feel primarily responsible. An analysis of the position taken by any power immediately reveals the fact that all its views, whatever general motives may have been avowed, may be explained on the basis of a national policy. Of readiness really to "give and take" in view of a clearly understood general interest there is as yet surprisingly little. Great Britain appears in the character of the arbiter of the sea, her powerful fleet outnumbering that of her most prominent rival four to one. The limitation of armaments proposed by her would leave her in a position of unquestioned ascendancy. The fullest advantage to be derived from the possession of a powerful fleet in time of war is connected with the right to seize the private property of enemies. Her insular position renders her willing to give up the seizure of contraband, especially as in all wars in which she is not involved, her carrying trade would gain materially from such an exemption. To protect her magnificent instrument of supremacy, she of necessity opposes the use of mines by which even the poorest may become dangerous. Russia, disgraced in the recent war, torn by internal revolution, seeks to rehabilitate her international standing

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by playing the leading rôle in this great conference. Reluctant to give up for the future the lead which she has secured, her shrewd diplomats, under the veil of an abdication or self-denial, retained further control. On questions of international law their action is inspired by a desire to get a formal ratification of questionable practices during the recent war. Germany, an ambitious power with a teeming population to protect and provide for, scans every measure and on principle opposes the imposition of limitations on national action. Her interests diverge from those of Great Britain in the matter of contraband and private property, and the disparity in naval armaments leads her to resist restrictions upon the use of mines and to favor the freedom of conversion of merchantmen. A decided step in advance is taken through the proposal for an international court on prize cases; but on account of their relative naval strength, it would be more to the advantage of Germany than of Great Britain that the law of prizes should be administered by an international tribunal. Germany could count on the faithful support of Austria, and even Italy was ready to be led by German diplomacy—perhaps in order to make up for her lack of coöperation at Algeciras. The delegation of the United States being to some extent free from the urging necessity of sharp calculation of causes and effects which the European situation imposes on the Old World powers could throughout take a broader view of the measures before the conference. It, therefore, more than any other important delegation, represented the policy of declared optimism which takes seriously the opportunities for betterment presented by international agencies. The traditional liberalism of the French nation was effectively represented by the delegates of that republic, men prominently identified with pacific movements, who acted in the spirit of the present era of good feeling in the European diplomatic world. But it was no less their aim to safeguard the concrete interests of their nation.

The present conference has added in many ways to our knowledge of the principles of international action. It is readily apparent that a conference of this nature cannot reasonably be expected, under existing circumstances, to take the initiative in important and far-reaching improvements of international relations. It can at best facilitate the creation of an international public opinion and register and ratify those

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rules and principles upon which all important powers are in substantial agreement. The danger of premature attempts to procure formal international sanction for certain principles is obvious. When subjects not ripe for such action are submitted, the more reactionary view will often be strengthened by the resolutions of the conference. One or more of the great powers will interpose an objection to really progressive action, and the result will be that, in order outwardly to save its credit before the world and to respond to the clamor for action, the conference will adopt a set of resolutions or a convention, so colorless, indefinite, and lenient, as to weaken the authority of the principles sought to be established. It is difficult to see what is to be gained by certain formal pronouncements of the present conference, such for instance as those upon the duties of neutrals, submarine mines, the status of merchant ships in enemy ports at the beginning of war, and the conversion of merchantmen. These conventions embody in the main the practice which heretofore even the most reactionary among the powers would not openly have dared to question. Undoubted advantage has, however, been gained along certain lines. The settlement of the problems involved in the so-called Drago doctrine is a highly valuable result. The establishment of definiteness in the time of commencement of war, the exemption of unfortified towns from bombardment by naval forces, the more complete extension of Red Cross activities and privileges to maritime warfare, will all be welcomed as distinct advances. The provision added to the convention concerning land warfare, that it shall not be permissible for a belligerent state to declare void or suspended, the rights, in possession or action, of alien enemies, is perhaps the most radical change introduced, although it has passed almost unnoticed, thus far. Of special importance is the establishment of a true international tribunal with obligatory jurisdiction—the prize court. Unfortunately, the conference was not able, under the circumstances, to complete the arrangements for this institution, and it remains to be seen what will be done by the special conference which is to be convoked.

It is plain, that constituted as it has been, the Hague conference is not an ideal instrument for legislation. The program has been prepared by the power issuing the invitation and it necessarily reflects special views and interests. Other governments keep their plans secret

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and the exact character of the proposals to be made is revealed only as the conference proceeds. Consequently everyone is cautious and on the *qui vive* for surprises. Delegations refuse to commit themselves to schemes the tendency of which cannot be completely fathomed at the time. The range of discussion is unduly extended, the energies and activities are dispersed over too large a field. In contrast to the great international conferences of our day, the earlier congresses, e.g., that of Vienna, and that of Paris (1856), had before them the solution of specific political problems; their negotiations could therefore result in definite action, although even they engaged in an abundance of futile debate. Recent conferences, such as those of The Hague or of the International Union of American Republics are expected to deal with the entirety of international relations and in some more or less definite way to advance the cause of civilization.

The organization of the Hague conference has not been favorable to efficient work, nor is strict parliamentary procedure followed. Commissions are subdivided into committees, the chairmen of which conduct the proceedings according to their personal sense of fitness. Motions are accumulated and resolutions are amended beyond recognition. The confused results are then entrusted to an editing committee which is thus in a position to exercise great influence through the form it may give to resolutions or conventions. Of course any power retains the right to abstain from voting or to interpose its veto, but this results in delay and obstruction rather than in the promotion of effective action.

It may be expected that as international institutions increase in number and functions, the work of the conference will also become more definite and concrete. The juridical work of the permanent tribunal and of the prize court will reveal specific problems which will call for authoritative settlement at one of these great congresses. The resolution calling for a future conference contains a provision according to which a committee of preparation is to be constituted two years before the convening of the main body. Upon the work of such a committee with respect to the program and mode of procedure, the success of future conferences will largely depend. The main condition of permanent success lies, however, in the realization of a more pervading feeling of solidarity among the great powers and among the

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leaders of opinion in the various countries. The American nation is by nature placed in an exceptionally favorable position, not hemmed in by jealous and suspicious neighbors, with a free sway of dominion and of influence over a continent lavish in natural resources. Not being fettered by some of the more harassing necessities of European countries, embodying in its diplomatic traditions the principles of friendly coöperation, it may be hoped that our nation will continue to take a leading and creditable part in the development of the relations which find their center in the Hague conference. But to this end it will be necessary that we should not only advocate and introduce international reforms, but ratify them when they have assumed the form of treaties and thus pass beyond an empty homage to the broader ideals of international life.

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POLITICAL THEORIES OF THE SUPREME COURT FROM 1789–1835

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INTRODUCTION

Prior to the time of the organization of the national government under the Constitution of 1787 the province of a court was very definitely determined. In accordance with the principles of ancient custom, a court was a tribunal established by law with the power to hear controversies between persons and to administer relief or punishment. It was the business of a court to interpret, pronounce and execute the law, to decide controversies and enforce rights. In the words of Lord Coke, "a court is a place where justice is judicially ministered."[1]

Such was the traditional position of a court when the Federal Constitution went into operation in 1789. A supreme court was provided for, to be organized by congress, in whose hands was placed the authority to create such inferior courts as might be necessary to carry out the judicial duties allotted to the federal government. The supreme court which was established by one of the first acts of the congress which met in 1789 very soon recognized and affirmed the limited and definite field for the exercise of judicial authority. The judicial department, said Chief Justice Marshall, "has no will in any case. * * * Judicial power, as contra-distinguished from the power of the laws, has no existence. Courts are the mere instruments of the law."[2] Even at an earlier day Justice Story had expressed a similar view. In the Dartmouth College case he states that "it is not for judges to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but pronounce the law as we find it and having done this our justification must be left to the impartial judgment of our

[1] Co. Litt. 58a.
[2] Osborne v. Bank of the United States, 9 Wheaton, 738.

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country."[3] Thus it was judicially determined that courts were merely the interpreters and expounders of the law of the land. It did not then fully appear that a slight departure from the realm of duties of courts of justice, practiced for more than a quarter of a century, was to lead to the evolution of a unique principle in governmental development whereby the courts of the United States would be obliged to enter the field of the discussion of political theories and would be involved in the subtle and elusive problems of politics.

James Otis in his argument on Paxton's case of the writ of assistance announced a principle which has led to the assumption of relatively new powers by the courts of the United States and has had a momentous influence on the development of the American system of government. Otis argued in reliance upon the statement of Lord Coke and the dicta of other English judges that "where an act of parliament is against common right and reason or repugnant or impossible to be performed, the common law will control it and adjudge it to be void."[4] Regardless of the fact that the principle then enunciated had practically been repudiated in England, it was accepted by the colonists and at an early period incorporated into the legal systems of the States.

Sir William Blackstone in his *Commentaries*, first published in 1765, admitted "that the rule is generally laid down that acts of parliament contrary to reason are void," adding, however, "but if the parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it."[5] Yet in direct contradiction to the practice of legislative supremacy so firmly established in England by 1688, and contrary to the prevalent tendencies of the time, the colonial courts adopted the principle that a law contrary to the constitution or contrary to natural law and justice was void and that it was the duty of the courts to restrain the legislative authorities.

The courts of New Jersey seem to have led the way in establishing this precedent in the case of Holmes v. Walton, decided in the year 1780.[6] Two years later in Virginia it was announced that the court had power to declare any resolution or act of the legislature or of

[3] 4 Wheaton, 519.
[4] See note on Paxton's case: Thayer, *Cases on Constitutional Law*, vol. i, p. 48, et al.
[5] See Thayer, vol. i, p. 51.
[6] Cited in 4 Halstead, 444.

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either branch of it to be unconstitutional and void.[7] A similar decision was reached in Rhode Island in the case of Trevett v. Weeden in 1786.[8] Only a few years later the superior court of South Carolina decided that an act of the legislature was "against common right, as well as against magna charta and therefore ipso facto void."[9] And in 1795 the circuit court of the United States for the Pennsylvania district in a very strong opinion declared in favor of a final review of legislation by the courts.[10]

There are several cases in which the authority of the legislature is maintained and the courts' power of review denied. As a result of the controversy involved in a case before the mayor's court of New York City in which an attempt was made to set aside a law of the State government, the assembly of the State resolved "that the judgment aforesaid is, in its tendency, subversive of all law and good order, and leads directly to anarchy and confusion, because if a court instituted for the benefit and government of a corporation may take upon them to dispense with and act in direct violation of a plain and known law of the State, all other courts, either superior or inferior, may do the like; and therewith will end all our dear-bought rights and privileges and legislatures become useless."[11] Even the supreme court took a rather uncertain attitude on the issue at least until 1799 when a number of the State legislatures in replying to the Kentucky resolutions of 1798 expressed themselves decidedly in favor of a final power of interpretation in the hands of the highest courts of the land. It remained for Chief Justice Marshall to settle the question almost beyond the possibility of a doubt, especially so far as the national authorities were concerned in the powerful opinion delivered in 1803 relating to the case of Marbury v. Madison.[12]

[7] Commonwealth v. Caton, 4 Call, 5.

[8] See Thayer, vol. i, p. 73.

[9] Bowman v. Middleton, 1 Bay, 252.

[10] "The constitution is certain and fixed; it contains the permanent will of the people; and is the supreme law of the land; it is paramount to the power of the legislature, and can be revoked only by the authority that made it." "The Constitution fixes limits to the exercise of legislative authority and prescribes the orbit within which it must move." Vanhorne's Lessee v. Dorrance, 2 Dallas, 304.

[11] See Thayer, vol. i, p. 73.

[12] 1 Cranch, 137.

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Against the obnoxious acts of an unlimited government arose the fierce resistance of the colonists which led to the revolution. That tendency against which they were certain they must guard themselves was an arbitrary and absolute power in the government. The doctrine advanced during the early period of the revolution—that courts of justice could declare void acts of the British parliament, applied with peculiar significance to American governmental ideas wherein certain fundamental laws were regarded as having an inherent and intrinsic force beyond the ordinary acts of the legislature. To preserve written constitutions and to protect the individual against the encroachments of legislation beyond the limits prescribed by the people, a final arbiter or tribunal of appeal was necessary and indispensable. It seemed quite natural and appropriate to place courts of justice in the position of guardians of written constitutions. The wonderful significance of this departure and the consequences upon a political system as well as upon a system of courts were scarcely comprehensible in this early period of the American nation. In the development underlying the principle involved in the determination of this important point lies the basis for the fact that courts in the United States are continually called upon to deal with questions that are purely political and governmental; to enter partially at least into the realm of legislation; and to discuss questions of political, economic and social theory.

If the supreme court of the United States had followed strictly and consistently the line of duties regularly allotted to a court, it would be useless to search the judicial opinions of that body for political theories. From a strictly judicial standpoint, the court should have had no particular theories to expound in the interpretation of the constitution, laws, treaties and public acts brought to its consideration. But the supreme court did not confine itself so rigidly to an exposition of law, pure and simple; and in view of the commanding position which the court soon found occasion to assume in the system of government outlined by the Constitution, the justices in giving their opinions on the cases to be determined, thought it incumbent upon them to discuss fully and clearly some of the fundamental problems of political theory.

There were, however, too many obstacles to have made it possible for the court to follow a definite system of political theory. The funda-

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mental duties of a court forbade any elaborate dissertations on government. The court was made up of several justices, each holding independent and sometimes totally opposite views. Finally, whatever theory may be gathered from the decisions of the court must be considered as the opinion of a justice given under existing circumstances to decide a definite case. Certain tendencies underlying the court's interpretation of the law are rather clear and definite and on a few subjects the position of the court has been strong and decisive enough to give a definite setting for American political theory as well as American constitutional law.

The reported decisions of the court have little to offer that is new or original in the field of political theory. It is rather the court's lucid expression of the prevailing political doctrines that has given these judicial opinions such a marked prominence in crystallizing the political thought of the nation. One of the essential questions with which political theory has to deal, is the separation of governmental powers. Locke, in his *Essays on Civil Government*, speaks of a separation of governmental powers but declares in favor of a supreme legislative authority.[13] Montesquieu, in his *L'Esprit des Lois*, suggests the idea of a threefold separation of powers which became the basis for the division of powers in American constitutions, State and national.[14] But France very soon interpreted the principle announced by Montesquieu so as to make the judiciary practically subordinate to the executive and legislative departments of the government. It was a question of paramount importance to determine the exact meaning of the separation of governmental powers under a constitutional system such as that formulated in the convention at Philadelphia.

[13] "There can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them." Locke, *Treatise on Government*, chapter xii.

[14] Il y a dans chaque État trois sortes de pouvoirs: la puissance législative, la puissance exécutrice des choses qui dépendent du droit des gens, et la puissance exécutrice de celles qui dépendent du droit civil. Montesquieu, Book XI, chapter vi.

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SEPARATION OF GOVERNMENTAL POWERS

The Constitution of the United States does not expressly grant the power to the supreme court to declare acts of congress, contrary to the Constitution, void, but in the arguments preceding the adoption of the Constitution, there are a number of opinions favoring the view that wherever a particular statute contravenes the Constitution, it will be the duty of the judicial department to declare such an act void. It was continuously asserted that the judicial department should be an independent and coördinate branch of government. The first case touching the relation of the departments of the United States was Hayburn's case.[15] An attempt was made by an act of congress to appoint the judges of the circuit court to receive and determine upon the claims of certain persons to be placed upon the pension list. There was opposition to the act on the ground that congress could not by law assign to the judicial department any duties but such as were of a judicial nature. It was intimated that the members of the court would execute the act as commissioners and not as acting in their regular judicial capacity whence the executive authorities and the legislature might act as a court of errors. While the case was under consideration congress passed another act making a decision by the court unnecessary, but the notes of the justices indicate the position which was taken in later decisions more directly to the point. In 1798, a case was appealed to the supreme court to test the validity of a retroactive law passed by the legislature of Connecticut.[16] Justice Chase was satisfied that the supreme court had no jurisdiction to determine that any law of the State legislature contrary to the State constitution was void, but declined to express an opinion whether they could declare void an act of congress contrary to the Federal Constitution. Justice Iredell, who had previously expressed an opinion unfavorable to this authority of the court now said: "If any act of congress or of the legislature of a State violates those constitutional provisions, it is unquestionably void; though, I admit, that as the authority to declare it void is of a delicate and awful nature, the court will never resort to

[15] 2 Dallas, 409.
[16] Calder v. Bull, 3 Dallas, 386.

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that authority but in a clear and urgent case."[17] The timid and doubtful attitude concerning this power was very evident in the first cases which came before the court. "To be obliged to act contrary," says one justice, "either to the obvious direction of congress, or to a constitutional principle, in our judgment equally obvious, excited feelings in us which we hope never to experience again."[18] The way the court should decide when the direct issue presented itself seemed fairly clear and gradually impressed the members of the court in favor of a final power of review by the federal judiciary. It was left for Chief Justice Marshall, whose creative thinking was always expressed in the most definite and lucid style to lay the corner stone of this unique feature of the American system. The fundamental principles of constitutional interpretation as well as the most important opinions of the supreme court on the field of political theory were contributed by the master mind of Marshall.

The position of the court and the relation between the three departments of our government were determined by the chief justice in the great case of Marbury v. Madison.[19] The question arose whether the authority given to the supreme court—by the act establishing the judicial courts of the United States—to issue writs of mandamus to public officers, was warranted by the Constitution, or, in other words, whether an act repugnant to the Constitution could become the law of the land. The court declares: "This original and supreme will organizes the government and assigns to different departments their respective powers." "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written." "It is a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it; or, that the legislature may alter the Constitution by an ordinary act."

"The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, alterable when the legislature shall please to alter it."

"Certainly all those who have framed written constitutions contem-

[17] Calder v. Bull, 3 Dallas, 386.
[18] Note to Hayburn's Case, 2 Dallas, 409.
[19] 1 Cranch, 137.

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plate them as forming the fundamental and paramount law of the nation; and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the Constitution, is void."

"If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply."

"Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that the courts, as well as other departments, are bound by that instrument." This masterly opinion at once settled the doubt regarding the authority of the court in a manner that was clear, definite and decisive. In it, the chief justice declared that the supreme court was the final interpreter and guardian of the Federal Constitution and formulated a theory of the separation of powers differing widely from the English system and entirely distinct from the interpretation of that theory advanced by Montesquieu. The case became authority for the proposition which already had been incorporated into a number of State constitutions and which was destined to become a distinct feature of the whole political system of the United States—that a constitution is a fundamental law formulated by the people acting in their sovereign capacity, in which the government is organized and the limits are prescribed for the exercise of governmental power; and, that the courts as interpreters of the law are given the authority to preserve and defend these constitutions as inviolable acts, to be changed only by the original and supreme power. President Jefferson did not accept as final the opinion of the chief justice but it was clearly in line with the prevailing opinion of the time, and the reverence for law so notable among the American people has made it possible for the court to maintain its position with very few exceptions.

The supreme court guided by a Constitution which rather broadly determined its field and defined its powers became henceforth the final interpreter of its own authority as well as the authority of the other departments. To have abused this power especially at the beginning would have meant the speedy downfall of the high authority of the

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court. The court had had several reverses and realized that its way must be paved with great caution. Important questions of governmental policy were brought to the court for solution. To guard the position of the federal judiciary and to keep it out of politics as far as the exigencies of the case would allow, there was recognized in the distribution of powers by the Constitution, a realm within which it was not the province of a court to interfere. "By the Constitution of the United States," says Chief Justice Marshall in the case, Marbury v. Madison, "the president is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. * * * ''Where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the president, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable."[20] Again, in the case of Foster v. Neilson,[21] Marshall holds that, "in a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government." "The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided." The court here accepted as final an act of congress determining a boundary dispute with Spain regarding the territory of Florida whereas according to the Constitution the executive in conjunction with the senate is that branch of government to which our foreign relations are entrusted. The so-called realm of political issues or political powers has served as a refuge for the court when any definite determination would have been of a delicate and uncertain nature involving the court in the direct field of political controversy.

Justice Chase recognizes a further limitation upon the power of the court in the case of Ware v. Hylton.[22] "The legislative power of every nation," says he, "can only be restrained by its own constitution; and it is the duty of its courts of justice not to question the validity of any law made in pursuance of the constitution." The justice of a legis-

[20] 1 Cranch, 137.
[21] 2 Peters, 253.
[22] 3 Dallas, 199.

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lative act could not therefore be questioned by the court unless there was an infringement of constitutional authority. The idea of rejecting laws contrary to natural justice or as infractions of the law of nature, though repeated a number of times by members of the supreme court, did not come to be regarded as sufficient ground to declare legislative acts void.

From the nature of its position and the principles underlying its organization, the supreme court has refused to consider any constitutional question unless a case is prosecuted by an individual demanding redress. Various attempts have been made to require the court to act as a general governmental counsel, giving the executive or the legislature, opinions upon the constitutionality of proposed measures. Soon after the establishment of the national government, Washington asked the opinion of the judges of the supreme court upon various questions arising out of the treaty with France. Concerning the attitude of the court Marshall writes: "It is probable that the difficulties felt by the judges of the supreme court in expressing their sentiments on the points referred to them were communicated to the executive. Considering themselves merely as constituting a tribunal for the decision of controversies brought before them in legal form—these gentlemen deemed it improper to enter the field of politics by declaring their opinions on questions not growing out of the case before them."[23] Each department of our government, then, has a definite sphere of action within which there can be no outside interference. The legislative, executive and judicial departments are in a rather definite sense coördinate branches of one government. On certain subjects each department is free to act without the interference of the others, whereas the judicial department declaring the law is a decided check upon the legislative and executive encroachments which are manifested in many governments. Most significant of all is the fact that the supreme court has thus become an independent, coördinate and controlling branch of the national government. The separation of powers in the United States means that the courts must exercise to a certain degree legislative duties. Laws of congress, in one sense, are not final until this highest court has granted its seal of approval. This is part of the

[23] Letter of Marshall (unpublished).

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price paid to preserve the sanctity of a written constitution; to uphold under a presidential system the real sovereignty of the people; and, to assure the success of a federal system of government in the United States.

NATURAL LAW AND CIVIL LIBERTY

The political thinking of this period was saturated with the social contract philosophy, its principles of natural law and its guarantees for the liberty of the individual. The supreme court in its opinions could not escape references to these prevalent notions. "There are," says Marshall, "certain great principles of justice, whose authority is universally acknowledged, that ought not to be disregarded." The chief justice gave an opinion in this case that the State is prevented from passing obnoxious acts by general principles which are common to our free institutions.[24] At another time Justice Chase stated that "there are certain vital principles in our free republican government which will determine and overrule an apparent and flagrant abuse of legislative power, as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the government was established. An act of the legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority."[25] The social compact theory seems to have been accepted by many members of the court but it is seldom that any reference to the theory can be found in their opinions. However, a comprehension of the theory is necessary at many times to understand the views of the court. The idea of an original compact or agreement which it was the duty of the supreme court to guard as well as certain fundamental principles of law and justice, for the preservation of which courts were instituted, gave added force to the determination that it was the province of the courts to keep the powers of congress within well defined limits. An attempt was made to uphold the fundamental principles of republican government and the spirit of the Constitution as well as to protect the individual when his natural rights were in danger of infringement.

[24] Fletcher v. Peck, 6 Cranch, 87.
[25] Calder v. Bull, 3 Dallas, 386.

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During the period from 1789–1835 the people had not become accustomed to the protection which the courts substantially afford today. The policy of the supreme court had to be constructive in order to maintain and strengthen federal authority. There are only a few instances in which the rights of the individual are upheld against the powers of government. In Marbury v. Madison, already cited, the court undertook to protect the right of office when vested in the individual. It was held also that no arrest could be made without a good and certain cause supported on the oath of an interested party,[26] and several limitations on criminal trials were defended against the encroachments of the officers of the government. The time had not yet come when the courts of the United States could be regarded as the bulwark of the liberties of the people. In the early years there were many objections to the power exercised by the supreme court but after a brief period there were appeals to this tribunal to check the encroachments of the State governments upon the rights of their own citizens. The supreme court, however, refused to apply the restrictions of the amendments to the Federal Constitution to the procedure of the State governments. The argument was made that "the Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States."[27] Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment approved. For protection against State governments the people must look to the State constitutions and the State courts. In short, the protection of the civil liberty of the individual was divided between the two governments, State and federal.

STATE AND SOVEREIGNTY

State and sovereignty are probably the most difficult terms to define that are to be found in political theory. They are among the most fundamental concepts at the basis of all political thought. The supreme court was very soon called upon to determine the significance

[26] Ex parte Burford, 3 Cranch, 448.
[27] Barron v. The Mayor and Council of Baltimore, 7 Peters, 243.

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of these terms under the federal system. To answer the claim that the District of Columbia was a State since it was a distinct political society, the chief justice said that "the members of the American confederacy only are the States contemplated by the Constitution;" that, "the word State is used in the Constitution as designating a member of the Union and excludes from the term the signification attached to it by writers on the laws of nations."[28] On the other hand, in order to have a tax apply to the inhabitants of the same district the court held that the United States in one clause of the Constitution was "coextensive with the territory under the jurisdiction of the government," and that the people of the district were required to pay the tax at the uniform rate provided by congress in accordance with the Constitution.[29] These two decisions did not touch the general meaning of the term State and left its use in the Constitution indefinite and unsettled. A number of later cases made it necessary to determine more clearly the meaning of the term State in our jurisprudence.

On the meaning of the term sovereignty the court is more explicit. There are a number of instances in which the court speaks of sovereignty as a term to be applied to the people only. Chief Justice Marshall seems to be thinking of sovereignty in this, its political sense, when he speaks of the supreme will which organizes the government and outlines the fundamental law for the whole community. The court, then, recognizes an ultimate sovereignty in the people which is the original power at the basis of government. Marshall, in discussing the nature of this power, says, that "the jurisdiction of the nation within its own territory is necessarily exclusive and absolute." "All exceptions to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself."[30]

The court repeatedly affirmed the proposition that the people of the United States adopted the Constitution and not the States in their sovereign capacities as was maintained by those favoring States' rights. One dissenting opinion is worthy of notice. Justice McLean, in Worcester v. the State of Georgia,[31] stated that, "the Constitution was

[28] Hepburn and Dundas v. Ellzey, 2 Cranch, 445.
[29] Hylton v. The United States, 3 Dallas, 171.
[30] The Schooner Exchange v. McFaddon, 7 Cranch, 116.
[31] 6 Peters, 515.

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formed, not, in my opinion, as some have contended, by the people of the United States, nor as others, by the States, but by a combined power exercised by the people, through their delegates limited in their sanction to the respective States. The vote of the people was limited to the respective States in which they resided. So that it appears there was an expression of popular suffrage and State sanction, most happily united, in the adoption of the Constitution of the Union." Chief Justice Marshall admitted that the people acted through the States as a matter of necessity in the adoption of the Constitution but he claimed that the States served merely as the most convenient administrative divisions by which the voice of the people was recorded. The national political sovereignty of the people was one of the prevailing political notions of the period. Nationalism versus particularism had not yet taken such a definite form that it was necessary to defend so vigorously either State sovereignty or national sovereignty.

There is a notion very evident in many opionions of the court, that sovereignty was divided in our system of government. "In America," according to Marshall, "the powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other."[32] At another time, the court states that "the general jurisdiction over the place, subject to this grant of power, adheres to the territory as a portion of sovereignty not yet given away. The residuary powers of legislation are still in Massachusetts."[33] "These States are constituent parts of the United States. They are members of one great empire for some purposes sovereign, for some purposes subordinate."[34] The several States according to the court, reserved all internal sovereignty. In one case the declaration was made that "the United States are sovereign as to all the powers of government actually surrendered. Each State in the Union is sovereign as to all powers reserved." A series of decisions gave expression to the same theory that sovereignty is capable of division and actually had been divided under the American system.

[32] McCulloch v. Maryland, 4 Wheaton, 316.
[33] United States v. Berens, 3 Wheaton, 337.
[34] Cohens v. Virginia, 6 Wheaton, 264.

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There appears to be, therefore, a confusion in the use of the term sovereignty. The original supreme will or the sovereignty of the people surely cannot be divided. The meaning of the court becomes intelligible only when it is recognized that sovereignty is used to express two different ideas. According to the first use sovereignty is the original supreme will which organizes the government. This will is indivisible, inalienable and is the very essence of the State under any form of government. Professor Dicey calls this political sovereignty, and as defined by Justice Story[35] it is, "the supreme, absolute, uncontrollable power, the *jus summi imperii*, the absolute right to govern." In a democracy, it is the sovereignty of the people as expressed through elections, constitutional conventions or constituent assemblies. In the second place, sovereignty may be used to signify the sum total of governmental powers. It may be used in a more limited sense to signify "such political powers as in the actual organization of the particular State or nation are to be exclusively exercised by certain public functionaries without the control of any superior authority." In this sense, sovereignty may be of a very limited nature. It may extend to a few or many objects. It may be unlimited as to some, it may be restrained as to others. This may be termed legal sovereignty. It is the sense most generally attached to the term by courts when they speak of a divided sovereignty. Governmental powers or the powers of sovereignty in such a legal sense are certainly capable of division. Speaking of the States as sovereign no doubt helped to create and foster the conviction that they must be sovereign in the political sense. The confusion in the use of sovereignty by the court increased the doubt regarding its location in a federal system and only added fuel to the conflict which was soon to be brought to the test of arms.

FEDERAL VERSUS STATE AUTHORITY

The most fundamental and by far the most difficult question that came before the court for determination was the legal relation between the governments of the States and the government of the United States. To the court as the final interpreter of the Constitution most of the important controversies affecting this relation were appealed. The

[35] *Story on the Constitution*, vol. i, pp. 142–3.

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extra legal methods followed throughout the Revolution, in the establishment of the confederation and especially in the course of the formation and the adoption of the Constitution led to almost insuperable difficulties which the court from the nature of its position was obliged to settle. The political nature of the issue did not seem to affect the court's consideration. Ware v. Hylton[36] is the first case in which this relation is directly discussed. The difficulty arose over the conflict of a law of the State of Virginia confiscating the property of British subjects and a section of the treaty of 1783 which provided for the payment of debts due British creditors—Justice Chase gave the opinion of the court and upheld that section of the treaty of 1783, regardless of the law of Virginia. He held that a treaty according to the Constitution of the United States is the supreme law of the land. Nevertheless, in this opinion, the justice announces a doctrine which later became the pronounced theory of the States' rights adherents: "In June, 1776, the convention of Virginia formally declared that Virginia was a free, sovereign and independent State, and on the Fourth of July, 1776, following, the United States in Congress assembled, declared the thirteen United Colonies Free and Independent States. I consider this as a declaration; not that the United Colonies jointly, in a collective capacity, were independent States, but that each had a right to govern itself by its own authority, and its own laws without any control from any other power on earth. I have ever considered it as an established doctrine of the States that all laws made by the legislatures of the several States after the declaration of independence were the laws of sovereign and independent States." This is a definite recognition of State sovereignty, especially during the period following the Declaration of Independence and only a little advance was necessary to lead to the Kentucky resolutions, the Hartford convention and direct nullification by South Carolina. This theory even in a more pronounced form is continually presented in the arguments on cases appealed to the court but it receives little encouragement in the decisions given by the court. Even Justice Chase determined that the treaty of 1783, declared to be the supreme law of the land by the Constitution, must be upheld and the law of Virginia repugnant thereto, was declared null

[36] 3 Dallas, 199.

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and void. Hereafter the doctrines of the federalists dominate the court to such a degree that practically all of the great cases are determined in favor of the national government, upholding almost exclusively the powers of the central authorities.

As early as 1809 in the case of United States v. Peters,[37] wherein there was a direct conflict between the sentence of a United States court and a subsequent act of the legislature of Pennsylvania, the supreme court says: "If the legislatures of the several States, may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery, and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals." It is emphatically declared that the ultimate right to determine the jurisdiction of the courts of the Union is not placed by the Constitution in the several State legislatures but in the supreme court of the United States. The national argument in favor of the supremacy of the federal courts is probably best formulated in the case of Martin v. Hunter's Lessee,[38] wherein it was claimed that the appellate power of the supreme court of the United States could not apply to the supreme court of Virginia. The opinion of Justice Story is strong and decisive. He holds that "the Constitution of the United States was ordained and established, not by the United States in their sovereign capacities, but emphatically, as the preamble declares by the people of the United States." "The sovereign powers vested in the State governments by their respective constitutions remain unaltered and unimpaired, except so far as they are granted to the government of the United States." The government of the United States can claim no powers which are not granted to it by the Constitution, either expressly or by necessary implication, but its words are to be taken "in their natural and obvious sense, and not in a sense either unreasonably restricted or enlarged." "It is a mistake that the Constitution was not designed to operate upon States in their corporate capacities. It is crowded with provisions which restrain or annul the sovereignty of the States in some of the highest branches of their prerogatives." "The courts

[37] United States v. Peters, 5 Cranch, 115.
[38] 1 Wheaton, 304.

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of the United States can, without question, revise the proceedings of the executive and legislative authorities of the States, if they are found to be contrary to the Constitution, and may declare them to be of no legal validity. Surely, the exercise of the same right over judicial tribunals is not a higher or more dangerous act of sovereign power." The supreme court had now declared itself as the board of arbitration between the federal and State authorities. Following the decision in the case of Marbury v. Madison any encroachment on the part of congress or the president could be prevented by the court whereas the opinion of Justice Story was authority for the doctrine that any act of a State—legislative, executive or judicial, even the final voice of the people in the State constitutional convention could be set aside when considered by the supreme court to be in conflict with the provisions of the Federal Constitution.

THE EFFECTS OF THE ELEVENTH AMENDMENT

Such a broad grasp of power in the hands of central authorities could not remain unchallenged by the States which were so jealous of the growth of any outside authority. The court's power and jurisdiction is attacked in almost every case involving constitutional issues and its authority is contested in every conceivable way. In 1793 when the court decided that the term sovereign could be used only when applied to the people of the United States, since the people of Georgia by acceding to the Constitution of the United States relinquished their sovereignty and vested control over themselves in the central government, and that as a consequence a suit against the State of Georgia for debt by a citizen of another State could be maintained in the United States courts, Georgia not only refused to execute the decree of the court but also declared a penalty of death upon any one attempting to enforce the decision.[39] A widespread excitement arose throughout the country and an amendment to the Constitution was hurriedly formulated and ratified by the requisite number of States, providing that the judicial power of the United States shall not extend to any suit commenced or prosecuted against one of the United States

[39] Chisholm's Executor v. Georgia, 2 Dallas, 419.

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by citizens of another State.[40] This amendment gave a new ground for attack since many cases could be so commenced and prosecuted that the State became one of the interested parties. Backed by the doctrine that a State may not be sued, the State of Virginia, in 1821, refused to execute an act of congress but instead executed one of the acts of its own legislature and claimed that neither the supreme court nor any other federal power had the right to interfere. Virginia claimed the right to accept or reject acts of the national congress. On an appeal to the supreme court, Marshall, delivering the opinion, determined the question in favor of the nation and silenced for a time those upholding State supremacy.[41] "They maintain," says Marshall, "that the nation does not possess a department capable of restraining peaceably, and by authority of law any attempts which may be made, by a part against the legitimate powers of the whole; and that the government is reduced to the alternative of submitting to such attempts or of resisting them by force." Referring to the number of State governments the chief justice remarked: Twenty courts of final jurisdiction, over the same causes "arising upon the same laws, is a hydra in government from which nothing but contradiction and confusion can proceed." "Such a construction would reduce to a nullity almost the entire Constitution and must in the consideration of that instrument be untenable." The Constitution declares the laws, treaties, and public acts of the United States to be the supreme law of the land and that the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding. "This is the authoritative language of the American people, and, if gentlemen please, of the American States." "The general government though limited to its objects is supreme with respect to these objects. This principle is a part of the Constitution, and if there be any who deny its necessity none can deny its authority." Though a sovereign and independent State may not be sued without its own consent such liability to suit is a portion of sovereignty that may be surrendered. The judicial department is authorized to decide all cases of every description arising under the Constitution or laws of the United States. From

[40] Article XI, Amendments to the Constitution of the United States.
[41] Cohens v. Virginia, 6 Wheaton, 264.

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this general grant of jurisdiction, no exception is made of those cases in which a State may be a party. We think a case arising under the Constitution or laws of the United States is cognizable in the courts of the Union whoever may be the parties to the case. The people made the Constitution and the people can unmake it. It is the creature of their own will, and lives only by their will. But this supreme and irresistible power to make or to unmake resides only in the whole body of the people. Virginia had lost her case and the national government had gained a decisive victory for the eleventh amendment adopted to protect State authority was reduced by interpretation to a mere shadow of the original intention.

LIMITATIONS ON THE POWERS OF THE STATE

Not only were the acts of Congress upheld at the expense of State authority but certain definite limitations were also placed upon the State governments in conducting their own affairs. The Constitution provides that the States shall not impair the obligation of contracts. On the basis of this provision the court held, in the case of Fletcher v. Peck,[42] that when a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights. It was the unanimous opinion of the court that the State of Georgia was restrained either by general principles which are common to our free institutions or by the particular provisions of the Constitution of the United States from passing a law whereby an estate could be constitutionally and legally impaired. The great case of Dartmouth College v. Woodward[43] extended the limitations already imposed. It was therein held that a charter granted to a private institution or corporation was a contract and that such contract could not be impaired by future legislation unless such right had been reserved in the original grant. "In respect to public corporations which exist only for public purposes, as counties, towns and cities, the State legislature may, under proper limitations have a right to change, modify, enlarge or restrain them, securing however the property for

[42] 6 Cranch, 87.
[43] 4 Wheaton, 519.

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the uses of those for whom and at whose expense, it was originally purchased. But the legislature cannot repeal statutes creating private corporations or confirming to them property already acquired under the faith of previous laws, and by such repeal vest the property exclusively in the State or dispose of the same to such purposes as they may please without the consent of the corporations."

The clause in the Constitution which authorizes congress to regulate commerce was likewise so interpreted as to take practically all commercial regulations out of the jurisdiction of the State. The court defined commerce to include traffic and general commercial intercourse and held that the primary regulations belong to congress and not to the States. It is said that the decision in Gibbons v. Ogden[44] destroyed the exclusive right to navigate the waters of New York by steam, so long enjoyed by Fulton and Livingston and released every creek and river, every lake and harbor in our country from the interference of monopolies granted by the State. In the case of Brown v. Maryland[45] the court maintained that a tax on the original importer of an article before it has become a part of general property of the State is a tax on commerce and therefore prohibited by the Constitution. The States had already been prohibited from taxing the bank of the United States on the ground that the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create and that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of the other.[46] "Whenever the terms in which a power is granted to congress, or the nature of the power, require that it should be exercised exclusively by congress the subject is as completely taken from the State legislatures, as if they had been expressly forbidden to act on it."[47] On the great subjects of contracts, commerce and taxation, the State governments were forced to submit to very important restrictions imposed by the Constitution as interpreted by the supreme court.

[44] 9 Wheaton, 1.
[45] Brown v. Maryland, 12 Wheaton, 409.
[46] McCulloch v. Maryland, 4 Wheaton, 316.
[47] Sturges v. Crowninshield, 4 Wheaton, 122.

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THE DEVELOPMENT OF THE DOCTRINE OF IMPLIED POWERS

At the same time that the supreme court was establishing its position as the final court of appeals in cases of a conflict of authorities, it was strengthening the position of the national government by the development of the federalist doctrine of implied powers. Our governmental system was inaugurated under a written constitution which enumerated but did not define the powers which it granted. Along with specific grants of power to the national congress it is further provided that the congress shall make all laws which shall be necessary and proper for carrying into execution the foregoing powers. On the interpretation of this clause the federalists and anti-federalists differed greatly. The latter favored a very strict construction of the Constitution, holding that only those powers were granted by the Constitution which were absolutely necessary and indispensable to the conduct of the government. The former favored every means available to increase the powers of the central government and desired a broad interpretation of the general grants of power given by the Constitution. The issue took a definite form in the policy of Hamilton toward the establishment of a national banking system. Hamilton's plan was incorporated into law regardless of the constitutional objections. In 1819 a contest arose over a second bank act in which the whole situation was presented to the supreme court in the case of McCulloch v. Maryland.[48] The counsel for the State argued that the bank of the United States was not necessary or indispensable to the carrying on of the operations of the federal government; that the Constitution did not emanate from the people, but as the act of sovereign and independent States; that the acts of congress chartering and protecting the Bank of the United States were not warranted by the Constitution and that the sovereign State of Maryland denies the obligation of those laws and will proceed to tax any banking association not chartered by its own legislature. Marshall delivered the opinion of the court: He reasoned that if any one proposition could command the universal assent of mankind, we might expect it would be this, that the government of the Union, though limited to its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature.

[48] McCulloch v. Maryland, 4 Wheaton, 316.

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It is the government of all; its powers are delegated by all; it represents all; and acts for all. The nation on those subjects on which it can act, must necessarily bind its component parts. This government is acknowledged by all to be one of enumerated powers. But the question respecting the extent of the powers actually granted is perpetually arising and will probably continue to arise as long as our system shall exist. "We think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution are constitutional." The national banking system was upheld, the State was prohibited from taxing the corporation and it was declared that the national government should not be confined to the execution of the powers strictly enumerated in the Constitution. Marshall pleaded for a natural interpretation of the words of the Constitution: In Gibbons v. Ogden[49] he says: "If they contend for that narrow construction which, in support of some theory not to be found in the Constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of that instrument; for the narrow construction which would cripple the government and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot perceive the propriety of this construction nor adopt it as the rule by which the Constitution is to be expounded."

"Powerful and ingenious minds, taking, as postulates, that the powers expressly granted to the government of the Union are to be contracted, by construction, into the narrowest possible compass, and that the original powers of the States are retained, if any possible construction will retain them, may, by a course of well digested, but

[49] Gibbons v. Ogden, 9 Wheaton, 1.

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refined and metaphysical reasoning, founded on these premises, explain away the Constitution of our country, and leave it, a magnificent structure, indeed, to look at, but totally unfit for use. They may so entangle and perplex the understanding as to obscure principles which were before thought quite plain, and induce doubts where, if the mind were to pursue its own course, none would be perceived. In such a case it is peculiarly necessary to recur to safe and fundamental principles to sustain those principles, and when sustained, to make them the tests of arguments to be examined."

The States had to submit to these authoritative expressions of the supreme court backed by the force of the federal government and upheld by the national political doctrines of the time. The foundation was firmly laid for a wide extension of the powers of the central government without recourse to the clumsy process of amendment, and the governmental policy was established by which the courts were carried into the field of the discussion and the determination of questions which are political, social, or economic. Chief Justice Marshall and his associates were largely responsible for this distinction in handing down a remarkable series of decisions upholding the jurisdiction of the court, favoring the extension of congressional authority, and limiting the powers of the States. By 1835, the constitutional system, which was inaugurated in 1789, had grown into a developed scheme of government, and the fundamental principles of political theory which were to become distinctly American in interpretation and practice had been thoroughly formulated in the great decisions of the federal supreme court.

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M. PRADIER-FODÉRÉ.

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The appearance of the eighth and final volume of M. Pradier-Fodéré's *Traité de droit international public européen et américain* seems a fitting occasion for a brief consideration of the life and works of this distinguished professor, counselor and author; more particularly is it appropriate to consider the extent and character of his services to that branch of public law dealt with in the above treatise, for it was to international law that he devoted the ripest years of a broad scholarship and the maturest judgments of an active life. M. Pradier-Fodéré was not simply and solely a student who looked out upon the hurly-burly of life from the secluded shelter of his study window; he was to no small extent a man of affairs who had come into close and intimate contact with matters of state on both sides of the Atlantic, and who, after a life of rich and varied experiences, settled down when over fifty to round out his life and his literary activity in the production of an extensive treatise on international law.

Paul Louis Ernest Pradier-Fodéré was born at Strassburg on the eleventh of June, 1827; he studied law at the university of his native place and in due course of time became an advocate at Paris; at the age of thirty he was made professor of law at the Armenian college at Moorat, but soon returned to Paris to fill the chair of law at the Armenian college in that city where he remained until 1874, when he was called by the government of Peru to organize the department of political science and administration of the university at Lima. By this time he had established his reputation as an author in the field of public law by the publication of numerous works: among them may be noted *Précis de droit administratif* (1853–8) of which a seventh edition was issued in 1876; *Traité de droit commercial* (1854–62); *Cours*

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de droit politique et d'économie sociale (1859); *Eléments de droit public et d'économie politique* (1864); *Translation of Grotius, Droit de la guerre et de la paix* (1865–66); *Principes généreaux de droit, de politique et de législation* (1869); *Documents pour l'histoire contemporaine* and *Portraits politiques* (1871); *la Question de l'Alabama et le droit des gens* (1872); and *Commentaire sur le code de justice militaire* (1873) in collaboration with Le Faure.

During the six years of his stay in Peru M. Pradier-Fodéré was in close touch with the government of the country and in 1879 published a brochure entitled *Affaire du Luxor*, which was a report to the minister of justice, culture and instruction on the capture of the German vessel *Luxor*, a case that grew out of the war then in progress between Chili and Peru. In this report M. Pradier-Fodéré showed a very enlightened spirit on some of the most difficult questions of international law; his ideas respecting the security of private property upon the high seas were most liberal and he advocated with vigor the rights of neutral commerce. He laid particular emphasis upon the fact that contraband trade was not in itself an illegal act nor an act of hostility, but that the basis of the right of seizure was the right of self defense on the part of the belligerent making the seizure; that the seizure of contraband goods was an exception to the rule of the freedom of neutral commerce and did not necessarily extend to the ship, which was liable to confiscation only when the owner authorized or tolerated the acts of the captain. Regarding the question of capture after the contraband articles have been deposited, the question, that is, of the "return voyage," he held that after the vessel has deposited the contraband, she then begins a new voyage and is not liable to capture; that the offense is deposited with the contraband—a position now all but universally recognized.

The years spent in South America gave M. Pradier-Fodéré the experience which produced the happy combination of jurist and man of affairs, invaluable in the publication, soon after his return to France and his establishment as counselor to the court of appeals at Lyons, of his *Cours de droit diplomatique a l'usage des agents politiques du ministère des affaires étrangères des états européens et américains* (1881).

At an age when most men begin to feel that the days of the sere and yellow leaf are at hand, and to say to themselves "I will take mine

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ease," M. Pradier-Fodéré began his exhaustive treatise on international law. One must marvel at the courage of the man who began when nearly sixty and who continued for twenty years a labor of such magnitude, and we cannot but join in the universal lament that his life was not spared till he had completed the few remaining chapters of the work to which he had devoted so many years. His death occurred on the twenty-eighth of June, 1904, and his son, "guided," as a note of the editor tells us, "by a sentiment of filial piety, manifested the desire that the work should stop at the precise point at which the pen dropped from the hand of his father;" and so the work, voluminous though it is, yet lacks any adequate treatment of neutrality.

The first and second volumes of the *Traité de droit international* appeared in 1885, the third in 1887, the fourth in 1888, the fifth in 1891, the sixth in 1894, the seventh in 1897, and the eighth and final volume together with an index in 1906. To get an adequate conception of the size of this work we must know that the total number of pages is 8721, not including the index which was made after M. Pradier-Fodéré's death and is itself a volume of nearly two hundred pages. In short the work is encyclopaedic and its greatest usefulness must always be as a reference book. The author's original idea contemplated four volumes, but the material grew to twice this size and the work is still incomplete. Of the criticisms that may justly be passed, one is that the work is too voluminous, that it contains too many digressions, particularly in the later volumes which are out of proportion to the earlier ones; that the citations and historical examples grow in length and number till it becomes a veritable compendium of the theory and practice of international law and much else besides.

Any attempt to discuss these eight volumes within the limits of so brief a paper must necessarily be fragmentary; the most that can be successfully accomplished is to give some general notion of their extent and character, of the author's conception and treatment of some of the more fundamental questions, and of his attitude toward and his relation to the science of international law and its progress, and in conclusion to attempt an estimate of the value of the work as a contribution to the science.

Before any fair judgment can be passed, we must know what M. Pradier-Fodéré had in mind to do. First of all then, we are told

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(I, V) that midway between the philosophers who can understand international law only in an abstract sense, and the statesmen who deny the existence of a general theory in the matter of the relations of one people to another, there is a modest rôle for the publicist, who pursues his investigations in accordance with philosophic speculations and the results of experience. The metaphysicians are out of favor. We no longer determine the relations of States in accordance with a natural law having its source in reason and its validity in its own nature without regard to consideration of utility and the provisions of treaties; Puffendorf and Thomasius with their identification of the law of nations and of nature find no hearers. The true view he sees in the statement of Professor de Martens of St. Petersburg that "the representatives of the science of international law in modern times have but a single object; to establish the positive legal principles which ought to govern the relations of States, by consulting, not only history, the material circumstances, and the actual conditions of life, but also the demands of scientific proof and the sentiment of right which prevails in the civilized world" (I, VIII). From this standpoint of the mingling of philosophic and positive elements, M. Pradier-Fodéré sets out to determine international law both as it is and as it should be (I, XVII). Without pretence of novelty in subject matter, our author lays claim to presenting the material in harmony with the new basis of the modern world. The triumph of democracy, and with it, of public opinion which determines the march of events, has changed the basis of international law. National welfare has replaced dynastic interests and this change finds complete expression in the altered position of diplomatic representatives, who no longer pursue the devious devices of the days of the divine right of kings, who are no longer spies, but who find it to their interest to be truthful and above board; exterritoriality is rejected as a barren fiction and the true basis of the rights of diplomats is recognized as being utility. Modern science, moreover, has greatly lessened the importance and influence of diplomatic representatives who have become merely agents "at the end of a telegraph wire." It is "from the point of view of the principles, needs and wishes of democracy" that the work was written (I, XV).

It may be objected to this view, that while it is impossible to neglect

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the influence of democracy and the growth of public opinion, international law as such has no concern with the form or character of the governments of the States subject to its provisions and the viewpoint is liable to lead to bias and even propaganda, particularly in determining what international law should be; and this is what we find has happened in the present case. Furthermore the attempt to determine what international law should be is in itself something of which we cannot approve in a scientific treatment of the subject. Such a task lies outside of the sphere of law and comes dangerously near the standpoint which M. Pradier-Fodéré himself confesses has no adherents. It gives opportunity for the promulgation of the subjective views of the author and is fraught with the constant danger of supplementing what is with what should be, without clearly drawing the line between them. It would seem most advantageous in a systematic treatise to deal only with positive law, that which has been determined by custom and agreement, leaving to the political-ethical philosopher and theorist the task of establishing the standards of action toward which men and nations should strive. The jurist may be warned in the words of Thomasius "not to put his sickle into the field of dread theology."

Another and more vital criticism may be made of M. Pradier-Fodéré's attempted use of the "philosophical" and "historical" methods. Neither should be employed alone or in its extreme form, he says, but a combination of both; yet it seems hard to imagine how the exclusive use of either could produce more unfortunate results than his combination. The full significance of his use of the "philosophical" method is not appreciated till we arrive at his definition of law in general and of international law in particular. Here we find ourselves in the full swing of the old natural law conception; like the laws of the physical world, the laws of the political and moral order are universal, of all time, immutable and absolute (I, 22). Law is not the arbitrary creation of the will; it precedes the constitution of the State; codes declare it but do not create it; it exists virtually and independently of all external expression (I, 29). It is the same idea that Grotius had when he proclaimed that the law of nature would be binding even were there no God. It is based on reason and is inherent in the nature of men and of society (I, 65). It is an

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ideal toward which actual law should tend to conform. "Philosophy ought to illuminate the facts, without once quitting the ground of reality: science ought to be filled with the inspiration of the actual and the ideal: the ideal, that is, the principles, the immutable elements of international law: the facts, that is, the mobile and progressive element" (I, 26).

From this starting point is developed the notion of a *droit-type,* which is *le droit qui doit être,* and which is as much a part of international law as *le droit qui est* (I, 65). The latter alone is stigmatized as only a kind of international hygiene. International law then falls into two parts: the great principles which are called *droit type, droit ideal,* having their moral source in the social nature of mankind and their sanction in nature and necessity; and the actual rules that guide and determine States in their relations with one another, as these rules have been accepted tacitly by custom or expressly by agreement.

M. Pradier-Fodéré is by no means unconscious of the opposition which this twofold view may provoke, and indulges in an extensive polemic and exposition, but without establishing, in our judgment, the scientific accuracy or the usefulness of the position taken. It is, to be sure, much easier to deduce the existence of international law as law from M. Pradier-Fodéré's conception of law, but the conception when deduced is utterly lacking in definiteness and scientific accuracy; it depends for its content upon the subjective consciousness of the author, and is entirely out of harmony with modern philosophical thought. Its apparent usefulness lies in the possibility it affords of almost unlimited advocacy of the rights of humanity and of man, but this service is more apparent than real, for it furnishes no stable foundation or guaranty for the maintenance of these rights.

It should be said, however, that M. Pradier-Fodéré is for the most part conservative in his application of the philosophic viewpoint. A distinguished critic of his work M. Adolph Rivier has said, "one finds with elevated views and considerations always liberal but without exaggeration of idealism, a grand richness of accurate information and materials which give to the work a character *positive et realiste du meilleur aloi.*" "There is always the inspiration of a generous and liberal spirit, which constantly demands of the rules that claim recog-

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nition, a conformity to the principles of morality and justice;" there is the constant impression of a great and magnanimous soul, striving to elevate the standard in accordance with which men and nations live and should live.

The first volume contains besides the usual general considerations on international law such as its nature, sources, sanctions, obligations, and extent, also the general principles concerning States; they alone are subjects of international law, are persons in its eyes; unorganized peoples, nomadic tribes, savages, rebels, the church and commercial companies are excluded as usual, but it is to be regretted that nothing was said regarding the position of the individual as a possible subject of international law, for this is a topic of growing interest. The States as such are regarded as having certain "absolute" rights such as self-preservation, independence, equality and property, and certain "conventional" rights which arise from treaties. That these so-called "absolute" rights can be deduced only from the standpoint of natural law, is clearly seen in the second volume (p. 8) where the equality of States is deduced from the equality which is a right of man based on human nature. From the modern standpoint these are not properly rights, but results of the character of the State as a person.

Sovereignty, which is the "breath of the common life" belongs to the State, i. e, to the people, and has an external and an internal aspect, but for international law there can be no question of sovereignty de facto and de jure. In the semisovereign State, which M. Pradier-Fodéré regards as "an anomoly in pure theory" (I, 158), the external relations of the State are limited or controlled by a superior power, but strange to say he does not regard the sovereignty of a State as lessened by the payment of tribute or by vassalage (p. 161–162): again will hardly be generally admitted that a State has a right to be recognized as a member of the family of nations (I, 236).

In the important chapter in which intervention is dealt with, we find, as might have been expected that the Monroe Doctrine is condemned as being itself intervention; the cause of humanity and the extension of civilization are repeated as justifiable grounds of intervention.

The second volume continues the discussion of the absolute rights of States, first to equality, to which we have already referred, and sec-

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ondly to property. Under the right of property are considered all the various parts of the land and water over which the States exercise imperium, as its actual land, including colonies, its territorial waters, straits, gulfs, bays, harbors, rivers, canals, etc. The volume closes with the "conventional" rights of States, that is, those secured by treaty. More than five hundred pages are devoted to the subject of treaties, and might very well have been comprised in a separate volume, thus greatly facilitating its use. There are two points that deserve a passing notice; the first is that permanent neutrality, as imposed by treaty, destroys the sovereignty of a State (p. 628). This view can be maintained only through a misconception of the real nature of treaties and the source and extent of the obligation they impose. It is, however, in accord with an opinion expressed in the first volume (p. 160), where it is held that sovereignty may be voluntarily limited. So it may, if it be given up altogether, but to limit themselves by treaty as the permanently neutral States have done, is to restrict the exercise of certain rights and powers, not to destroy their sovereignty, for M. Pradier-Fodéré himself would doubtless have been compelled to confess that complete freedom of action could be regained by these States by the sacrifice of the guaranty of the integrity of their territories.

The second point is in regard to concordats, which he considers real treaties, though he has previously (vol. I, 153) denied to the Pope the character of an international person.

The third volume devotes some five hundred pages to diplomatic relations, and is a treatise on diplomacy rather than on international law. It is interesting to note that ambassadors, even in constitutional countries, are regarded with approval—an opinion which has been gaining ground in this country though so distinguished a diplomat as Mr. John W. Foster in his recent work, *The Practice of Diplomacy*, advocates their abolition.

The remainder of this volume, dealing with the relations of private law, as well as almost the entire fourth volume, which treats of the commercial and economic relations of the States, might better find their place elsewhere than in a work on international law. A large part of the fourth volume is given up to a history of the rise of commerce among the nations, to the growth of transportation and to comparative legislation; in short, it is economic and industrial history, not

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law. One topic here included is that of international administration, which receives the proper recognition denied it in most English and American works on international law.

Of the third, fourth and fifth volumes—the fifth deals with maritime relations—it may be said in general that they contain a great mass of material, good perhaps in itself, but entirely out of place in such a work, and that extraneous material fairly overwhelms and hides the good in them.

The sixth and seventh volumes, in which the relations of States in time of war are discussed, like everything else written before 1899 touching the subject, stand in need of revision since the first conference of the Hague. What is said however is quite in harmony with all the steps that have been taken toward regulating those relations. War, M. Pradier-Fodéré believes, cannot always be avoided, but nevertheless he is a strong supporter of arbitration, even going so far as to declare it the duty of governments to advocate it (VI, p. 376).

The major portion of the eighth and final volume is devoted to the relations of belligerents in maritime war and less than a hundred pages to the relations with neutrals; but it is unlikely that it would have required a great deal to complete the subject, for most of the questions which have been commonly in the public mind as pertaining to the rights and duties of neutrality and neutrals, are discussed in the preceding volumes. This volume, despite its incompleteness, is probably the best and most useful of them all, containing as it does the results of the Hague conference in respect to a number of subjects, as well as a discussion of the prominent questions up to 1904. M. Pradier-Fodéré's untimely death and the desire of his son to present the work as it came from his father's hand prevented the incorporation of any of the numerous and important questions which arose out of the Russo-Japanese war.

In conclusion it may be said that M. Pradier-Fodéré was not a man of genius and he has not left the stamp of genius on this, his most important work. The *Traité de droit international public européen et américain* will never be ranked among the masterpieces, will never be looked upon as epoch-making; it is lacking in creative-power, and partakes too much of the character of an encyclopaedia; there are too many monographs on too many subjects only distantly related to

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international law; there is lacking that unity and systematization necessary in a great achievement; yet the value and usefulness of a work of this character are undeniable and it will take rank along with Calvo as a rich source of information and discussion.

Its fundamental defect would seem to lie in the failure to grasp the modern conception of international law as real law, based exclusively upon the positive elements of the practice and agreements of the nations.

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NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

Bank Depositors' Guaranty Fund. A law enacted in Oklahoma, December 17, 1907, provides for a guaranty fund for the protection of bank depositors. The fund is secured through an assessment of 1 per cent of the bank's daily average deposits (less the deposit of State funds properly secured) for the preceding year. If the fund is depleted from any cause, the State banking board is required to levy a special assessment to cover the deficiency. Every bank organized and existing under the laws of the State is made subject to the provisions of the act and any national bank in the State, approved by the bank commissioner, may voluntarily give its depositors the protection of the guaranty fund by complying with terms and conditions, in harmony with the purpose of the act, to be agreed upon by the State banking board, the bank commissioner, and the comptroller of the currency of the United States.

British Companies Act. On August 28, 1907, the British parliament passed the act which is officially known as the Companies Act of 1907 (7 Edw. 7. c. 50). This act grew out of the limited company reforms which first found expression in the Companies Act of 1900, and is largely supplementary to that act. British limited company legislation is embodied in the Companies Act of 1862 and amendments. Until the Companies Act of 1900, these laws and amendments were enacted to further the interests of the companies, in the belief that commercial and industrial development was dependent upon freedom of company organization and management. The evils arising from secrecy of organization and management resulted in 1894 in an investigation by a committee of which Lord Davey was chairman. This committee was empowered "to inquire what amendments are necessary to the Companies Act to the better prevention of fraud in relation to the formation and management of companies." After a careful investigation the committee reported its conclusions together with a draft bill in June, 1895 (Parl. Papers, vol. 88, 1895). The draft bill reported went through a long period of parliamentary incubation and finally emerged in the Companies

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Act of 1900, considerably changed and weakened, but in the main following the recommendations of the committee. The act was essentially one of publicity, it being argued that while "the legislature cannot supply the people with prudence, judgment or business habits * * * yet it must be generally acknowledged that a person who is invited to subscribe to a new undertaking has practically no opportunity of making an independent inquiry," and hence is at the mercy of unscrupulous managers. The law was criticised at the time as being unlikely to be effectual on account of the looseness and vagueness of its provisions. It was predicted[1] that it would make plenty of work for the courts and that its loopholes would enable its main provisions to be nullified. After a trial of seven years this opinion seems to be confirmed by the enactment of the law under consideration.

The new act interprets the existing law in many provisions where the courts have found it faulty. It amends important provisions which have been shown by experience to be ineffective, and supplements and strengthens by new provisions. Perhaps the most significant feature is the substitution of criminal for civil liability in case of companies or officers violating the law. From the standpoint of enforcement the act makes a distinct advance. The main provisions of the act are those relating to private companies, prospectuses and allotments, regulation and registration of debentures, payment of interest from capital and of commissions, duties of auditors, reports and balance sheets, foreign companies, general meetings, voluntary winding up, and duties and liabilities of directors. The act in the main follows the outline of the Companies Act of 1900.

PROSPECTUSES. Where a company does not issue a prospectus, a statement must be filed with the registrar in lieu thereof, signed by every director or proposed director. The main provisions of the Companies Act of 1900 are made to apply to all companies whether or not they issue an invitation to the public to subscribe, and no allotment is permitted until the minimum subscription has been secured. In place of the provision which made an attempt to separate companies which issue invitation to the public to subscribe from those which do not, it is provided that the law is not to apply to "private companies." A private company is defined as being "one which restricts the right to transfer its shares; limits the number of its members to fifty, and prohibits any invitation to the public to subscribe for any shares or debentures of the company."

[1] Barlow, "The New English Companies Act," *Econ. Jour.*, vol. XI, p. 180, 1901.

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Certificates of all shares, debentures, and certificates of all debenture stock allotted or transferred must be prepared within two months following registration, but relief may be granted by the courts for mistakes or omissions. All companies and their officers are made criminally liable for failure to comply with the provision of these sections.

SHARES AT DISCOUNT AND COMMISSIONS. Discounts and commissions may be paid to sub-underwriters by any agent, vendor, or promoter, and it is declared that that power has always existed. All discounts and commissions must be stated in the summary required by the act of 1862 and appear on every balance sheet until "written off." This provision is to apply to companies which do not issue an invitation to the public to subscribe provided it is permitted by the company and the amounts specified in prospectuses or statement.

PAYMENT OF INTEREST OUT OF CAPITAL. This is permitted in case of shares of a company issued for buildings or provision of plants "which cannot be made profitable for a lengthened period," if it is authorized by the articles of association or by special resolution of the company and sanctioned by the board of trade after an investigation at the expense of the company. Such payments are to be made for a period not extending "beyond the close of the half year after the actual completion of the buildings or plant." The rate is fixed at a maximum of 4 per cent, the actual rate to be prescribed by order in council. Payments of such interest are not to operate to reduce the amount paid on shares in respect of which it is paid, and the accounts are to show the important data of such transactions.

MORTGAGES AND CHARGES. The provisions relating to mortgages and charges of the Companies Act of 1900 are increased and strengthened. Mortgages or charges on "any land wherever situate, or any interest therein, or a mortgage or charge on any book debts of the company" are added to the section enumerating the requirements of registration. All specified mortgages and charges enumerated are void against the liquidator and any creditor of the company unless "the prescribed particulars of the mortgage or charge together with the instrument (if any) by which the mortgage or charge is created or evidenced are delivered to or received by the registrar for registration within twenty-one days from the date of its creation, and if a mortgage is made void by such failure the money secured thereby becomes immediately payable. This new law also makes provision for registration of mortgages and of charges made outside or inside of the United Kingdom on property situated outside the United Kingdom. Negotiable instruments given to secure

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the payment of any book debts deposited for security are not to be treated as a mortgage or charge on those book debts, nor shall debentures entitling the holder to a charge on land be deemed an interest in land. When commissions, allowances, or discounts have been paid directly or indirectly in consideration of subscribing or agreeing to subscribe or procuring subscription, the particulars for registration must include the amount or rate of commission, discount, or allowance, though the failure to do so does not affect the validity of the mortgage. The endorsement by the registrar's certificate upon debenture or certificate of debenture stock as required by the Companies Act of 1900 is construed by the new act as not requiring the endorsement of any mortgage upon debentures or certificate of debenture stock issued prior to the mortgage. Every company is required to furnish all details required for registration and every director, manager, secretary, or other person who is knowingly a party to the default is liable to conviction and a fine of £50 per day during the continuance of the default. The penal provisions of section 43 of the Companies Act of 1862 are made to apply to any failure by a company to keep a register of mortgages and charges as required by law. Any person obtaining an order to appoint or who does appoint a receiver for any company must report that fact to the registrar within seven days or be subject to conviction and fine of £5 per day for each day of default. All companies are required to forward to the registrar within three months after the commencement of the act, a statement of the debts of the companies secured by mortgages or charges which would have required registration if created after the commencement of the act, except those already required to be registered, but failure is not to prejudice the rights of the holders. Criminal liability of £50 per day for default is fixed upon the company and the officers responsible. Floating charges given within three months of the winding up of a company are invalid unless the solvency of the company at the time be shown, except to the amount of any cost paid in consideration for the charge together with interest. Conditions in debentures which make them redeemable or irredeemable only on the happening of a contingency however remote or at the end of a period however long, do not make them invalid, "any rule of equity to the contrary notwithstanding."

Redemption of Debentures. Companies are permitted to keep alive any debentures redeemed prior to the date of their obligation to do so, for purposes of reissue, either of the same debentures or of others in their place. All rights and priorities flow with such reissues as if they had not been previously issued. Debentures transferred to a

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nominee of the company and again transferred by the nominee are considered reissues. Debentures deposited to secure advance on current account are not to be considered redeemed by the payment of such accounts. Reissues are subject to stamp duties, but not to any provisions limiting the amount or number of debentures to be issued.

REGISTERS. The register of mortgages required to be kept by section 43 of the Companies Act of 1862 is made accessible to the public on the payment of a fee. Registers of holders of debentures are made accessible to registered holders of debentures or shares of stock of the company and copies may be required by such holders on payment of a fee. Copies of trust deeds for securing any debenture must be furnished to holders of debentures on request and payment of fees. Failure or refusal to comply with these provisions subjects the company and officers to criminal prosecution and fine.

AUDITORS, BALANCE SHEETS, REPORTS. A new section is substituted for section 23 of the Companies Act of 1900, prescribing in more detail the duties of auditors, the object being apparently to bind the directors in the matter of their balance sheets and reports given by them. Balance sheets must be signed by two directors and the auditor's report must be attached or specifically referred to. To insure care in the selection of auditors, it is provided that nominations for auditors other than those already in office must be made at least fourteen days prior to the annual general meeting and notice must be sent by the company to the retiring auditor and to the shareholders at least seven days prior to the meeting. The penal law is applied to this case also for failure of the company or officers to comply with the requirements regarding balance sheets and reports. Reports required to be sent to the registers by section 26, Companies Act of 1862, must contain a summary "of its capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of such liabilities and assets and how the values of the fixed assets have been arrived at." Reports required by section 12, Companies Act of 1900, to be forwarded to members before the annual meeting must contain an abstract of the receipts and expenditures of the company in detail, showing the source of each revenue and application of all expenditures.

GENERAL MEETINGS. The new law amends section 49 of the Companies Act of 1862 by making the company and officer criminally liable for failure to hold the general meeting at least once in the calendar year and not more than fifteen months after the general meeting previous. This section also provides relief in case of such failures and for the par-

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ticipation of a company in the general meeting of any other company in which it holds shares.

WINDING UP. A liquidator in a voluntary winding up of a company must, subject to fine, file a notice of his appointment with the registrar within twenty-one days. He must also within seven days give notice to all creditors of the company of a meeting of creditors within twenty-one days and publish the notice. The creditors may accept the liquidator or ask the court for a different one and the court on such application may order a new appointment either as sole liquidator or joint liquidator. Costs and payments are to be determined by the courts. Provisions are made for determination by the courts, in regard to the sufficiency of reasons for winding up, and of the legal details connected with that process, and with appeals against the validity of the action. Directors are made criminally liable if they act without being qualified, whereas under the law of 1900 they were liable only in a civil action.

FOREIGN COMPANIES. Companies incorporated outside of the United Kingdom, but doing business therein must file with the registrar, a certified copy of their charters, statutes, and articles of association in the English language, a list of their directors, and the names of their authorized agents in the United Kingdom. They are required also to file with the registrar the summary required of domestic companies. Every foreign company which uses the word "limited" must give in its prospectuses the names of the country wherein incorporated, and must exhibit the same on its letter heads and conspicuously in its offices. Criminal liability follows default in this respect.

DEFINITIONS. Sixteen sections are added for purposes of interpretation of statutes and their applicability and the definitions and application of words and phrases.

OPERATION. The new law is made operative at once in its provisions relating to perpetual debentures and the power of a company to reissue redeemed debentures. The remainder of the law will become operative July 1, 1908.

JOHN A. LAPP.

Industrial Disputes. A law to aid in the prevention and settlement of strikes and lockouts in mines and in industries connected with public utilities, was enacted by the parliament of Canada and assented to March 22, 1907.

The law is cited as the "industrial disputes investigation act." It applies specifically to public utilities, such as gas, electric light,

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water and power works, to transportation and communication and to mining industries. However, provision is made that any dispute between a railway company and its employees may be referred for the purpose of conciliation and investigation under the provisions concerning railway disputes in the conciliation and labor act.

The act may also be made to apply to disputes in industries and trades other than those specifically included under its provisions whenever the parties to such a dispute make joint application to have a board of conciliation and investigation established.

The act does not apply in any case in which the employees affected by the dispute are fewer than ten.

The term "industrial dispute" includes any dispute relating to "(1) the wages, allowance or other remuneration of employees or the price paid or to be paid in respect to employment; (2) the hours of employment, sex, age, qualifications or status of employees, and the mode, terms and conditions of employment; (3) the employment of children or any person or persons or class of persons or the dismissal or refusal to employ any particular person or persons or class of persons; (4) claims on the part of an employer or any employee as to whether, and if so, under what circumstances, preference of employment should or should not be given to one class over another of persons being or not being members of labor or other organizations, British subjects or aliens; (5) materials supplied and alleged to be bad, unfit or unsuitable, or damage alleged to have been done particular work; (6) any established custom or usage either generally or in particular district affected; (7) the interpretation of an agreement or a clause thereof."

The general administration of the act is placed under the minister of labor. A register of boards of conciliation and investigation to be appointed by the governor in council is also provided for. It is made the duty of the registrar to receive and deal with applications by employers or employees for a reference of any dispute; to assist in constituting the boards as speedily as possible; to assist in giving effect to the recommendations of the boards; to register particulars of all proceedings before boards and to safeguard all documents relating to proceedings; to supply to any parties who request information, the necessary forms relating to proceedings before the board; and generally to do all things necessary in the performance of his duties prescribed under the act.

A dispute may be referred to a board of conciliation and investiga-

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tion whenever the parties thereto are unable to adjust it. Either of the parties to the dispute may make application to the minister of labor for the appointment of a board and whenever an application is made the minister is required to establish a board if satisfied that the provisions of the act apply.

The procedure for reference of any dispute to a board requires that the application be made in writing in prescribed form, and in substance be a request to the minister to appoint a board. The application is to be accompanied by a statement setting forth: the parties to the dispute; the nature of the dispute, including any claims or demands made by either party upon the other to which exception is taken; an approximate estimate of the number of persons affected, and the efforts made by the parties themselves to adjust the dispute. There is further required a statutory declaration setting forth that, failing an adjustment of the dispute or a reference thereof to a board of conciliation and investigation, a lockout or strike as the case may be, will, to the best knowledge and belief of the declarant, follow, and that the necessary authority to declare such strike or lockout has been obtained. The application may also mention the name of a person who is willing and ready to act as a member of the board.

Every board is to consist of three members appointed by the minister of labor The procedure for appointment of members of the board requires that each party to the dispute may, at the time of making application or within five days after being requested to do so by the minister, recommend the name of one person who is willing and ready to act, and the minister of labor is required to appoint such person a member. If either of the parties fail to make any recommendation within the time prescribed, the minister is required to appoint a fit person to be a member of the board, and such member is deemed to be appointed on the recommendation of such party. The third member, who is to act as chairman, is to be appointed upon the recommendation of the other two members, or, if they fail to act within the prescribed time, the minister is required to appoint a fit person, who is deemed appointed on the recommendation of the other two members. No person is permitted to act as a member of the board who has any pecuniary interest in the issue of the dispute, and before entering upon duty members are required to take an oath of office and of secrecy as regards the evidence.

The board has extensive powers for investigation. It is empowered to summon witnesses; to compel testimony; and to require

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the production of books and documents necessary to a full investigation of matters into which it is inquiring. For the purpose of securing evidence the board is vested with the ordinary powers of a court of record in civil cases and in addition it is authorized to accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not. With the consent of the minister, it is authorized to employ competent experts and examiners to make an examination of the books or official reports of either party and to advise it upon any technical or other matters material to the investigation; but such reports are not to be disclosed without the consent of both the parties to the dispute.

Any party to a reference may be represented before the board by counsel. Every party appearing by a representative is to be bound by the acts of such representative, but no counsel is entitled to appear before the board except with the consent of the parties to the dispute, and notwithstanding such consent the board may decline to allow counsel to appear.

The proceedings are to be conducted in public, but the board may, on its own motion or on the application of any of the parties, direct that all persons other than the parties to the dispute, their representatives, the officers of the board, and the witnesses under examination withdraw.

It is made the duty of the board to endeavor to bring about a settlement of every dispute referred to it. In the course of its inquiries it may make suggestions for inducing the parties to come to a fair settlement and may adjourn the proceedings for a reasonable time to allow the parties to agree upon terms. If a settlement is effected during the reference, a memorandum of the terms is to be drawn up by the board and signed by the parties to the dispute, and if the parties so agree, the terms may be made binding. A copy of the agreement and a report of the proceedings is to be forwarded to the minister of labor.

If a settlement is not effected, the board is required to make a full report to the minister setting forth the various proceedings and steps taken for ascertaining the facts. It is also required to report its findings, including the cause of the dispute and the recommendations for settlement. The recommendation is to deal with each item of the dispute and is to state what in the board's opinion ought or ought not to be done by the respective parties concerned. Whenever expedient, the recommendation is also to state the period dur-

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ing which the proposed settlement should continue in force and the date from which it should commence.

Either party to a dispute which may be referred to a board may agree in writing at any time before or after the board has made its report, to be bound by the recommendation of the board in the same manner as parties are bound upon an award made pursuant to a reference to arbitration on the order of a court of record. Every agreement so to be bound made by one party is to be forwarded to the registrar, who is required to communicate it to the other party and if the other party agrees in like manner to be bound by the recommendation of the board, then the recommendation is to be made the ruling of the court on the application of either party and is to be enforced in like manner.

Strikes and lockouts prior to and pending a reference to a board are made illegal but it is provided that nothing in the act is to prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or a strike. It is further provided that except where the parties have entered into an agreement to make the recommendation of the board binding the act shall not be held to restrain any employer from declaring a lockout, or any employee from going on strike in respect of any dispute which has been duly referred to a board and which has been dealt with under the provisions of the act.

Employers and employees are required to give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours; and in every case where a dispute has been referred to a board the relations of the parties to the dispute are to remain unchanged pending proceedings; however, if in the opinion of the board either party uses this or any other provision of the act for the purpose of unjustly maintaining a given condition of affairs through delay, the party so offending is liable to penalties.

Any employer declaring or causing a lockout contrary to the provisions of the act, is made liable to a fine of not less than $100 nor more than $1000 for each day or part of a day that such lockout exists, and any employee who goes on strike contrary to the provisions of the act is made liable to a fine of not less than $10 nor more than $50 for each day or part of a day that such employee is on strike. A penalty of not less than $10 nor more than $50 is also provided for inciting to a lockout or a strike. The procedure for enforcing penal-

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ties is the same as that prescribed by Part XV of the Criminal Code, relating to summary convictions.

All expenses incurred by the government in the administration of the act are to be defrayed out of appropriations made by parliament for that purpose.

M. A. S.

Inheritance Taxation. A great majority of the States have passed legislation taxing inheritances either direct or collateral, or both. Pennsylvania began as early as 1826 to tax property inherited by collateral heirs, and Virginia and Maryland followed in 1844 and since then nearly all of the States have passed laws relating to this subject. A majority of the laws now in force taxing collateral heirs have been passed or modified since 1900, and nearly all the laws taxing direct heirs have been passed or amended since that date. The present law in Idaho was passed in 1907; it imposes a tax on property inherited by both direct and collateral heirs. The Texas law was passed about the same time and imposes a graduated tax on property inherited by collateral heirs only (Laws 1907, p. 496). Massachusetts has had a collateral inheritance tax since 1891, but in 1907 this law was made more complete by a tax on direct heirs (Laws 1907, c. 563). Connecticut and New Hampshire have added minor amendments to their laws already in force, and West Virginia by a few minor changes in the law as enacted in 1887 now imposes a tax on property inherited by direct as well as by collateral heirs (Laws 1907, c. 55).

The Idaho law is very similar to the present Wisconsin law. The rate of taxation depends upon the relationship and upon the amount inherited, and not upon the size of the estate. The law applies to all property transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, or intended to take effect after his death. The whole system is rather complicated with its exemptions, groups, rates and relationships, but the general plan is simple enough, and it may best be understood by considering the relationships, exemptions and primary rates first. The primary rates apply only to property or beneficial interest exceeding the exemption which applies to the group, and not exceeding $25,000. By using the relationship group as the base, we get the following classifications:

1. If the person entitled to any beneficial interest in the property is a husband, wife, lineal issue, lineal ancestor of the decedent, or any child adopted as such in conformity with the laws of the State of Idaho,

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the rate is 1 per cent on the clear value of his interest in the property. In this relationship group, property to the clear value of $10,000 transferred to the widow or to a minor child of the decedent, and $4000 transferred to all other persons within the group, is exempt.

2. If the person receiving or inheriting is a brother or sister, or a descendant of a brother or sister, a wife, or widow of a son, or the husband of a daughter of the decedent, the rate is 1½ per cent. In this group, property to the clear value of $2000 transferred to each person is exempt.

3. If the person receiving or inheriting is a brother or sister of the father or mother, or one of their descendants, the rate is 3 per cent, and within this group property is exempt, to the clear value of $1500 to each person.

4. If the person receiving or inheriting is a brother or sister of the grandfather or grandmother or one of their descendants the rate is 4 per cent, and within this group exemption of property is made to each person to the clear value of $1000.

5. If the person receiving or inheriting is in any other degree of collateral consanguinity than those included in the groups mentioned, or is a stranger in blood or a body politic or corporate, the rate is 5 per cent and property to the clear value of $500 transferred to each person and corporation is exempt.

The rates here given are known as the primary rates and apply only to property inherited under $25,000 in amount and over the exemption provided for in each group or subgroup. When the market value of the property or interest exceeds $25,000, the rate of tax on the excess is as follows: Upon all in excess of $25,000 and up to $50,000, one and one-half times the primary rate; upon all in excess of $50,000 and up to $100,000, two times the primary rate; upon all in excess of $100,000 and up to $500,000, two and one-half times the primary rate; upon all in excess of $500,000, three times the primary rate. The amount of the tax depends on two things, the relationship and the amount inherited, and never on the size of the estate of the decedent.

Property transferred to societies, corporations, and institutions exempted by law from taxation, or to any corporation or society engaged in or devoted to any charitable, benevolent, educational, public or other like work, is exempt from taxation under the provisions of the law.

The tax is due and payable at once, but if paid within six months a discount of 5 per cent is allowed. If the estate cannot be settled within a year, due to claims or other unavoidable causes of delay, the probate

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court may extend the time of payment. Any administrator, executor or trustee having charge of the distribution of the legacy or property, deducts the tax from the legacy or property or collects the tax from the legatee or person entitled to the property. The administrator has power to sell enough of the estate to pay the tax, and the property cannot be delivered to the person inheriting it until the tax has been paid. The money retained by the administrator or paid to him is turned over to the county treasurer and he in turn pays it to the state treasurer and it becomes a part of the general fund of the State. If the tax is not paid, it becomes the duty of the judge of the probate court to issue a citation to any person owning an interest in the property liable to the tax to appear in court and show cause why it should not be paid. The treasurer of the county has a similar right, and if he believes that any tax is due and unpaid, he must notify the county attorney and it becomes his duty to prosecute the proceedings in the probate court. Every officer who fails, neglects, or refuses to perform any and all duties required by the provisions of this act, must forfeit to the State of Idaho the sum of $10,000. Such is the Idaho law. It is minute, comprehensive, and clear, and will probably stand the test of constitutionality if a trial is made.

The Texas law applies to all property passing by will or descent or by grant or gift, except that passing for the use of father, mother, husband, wife or direct lineal descendants, or to be used for charitable, educational or religious purposes. If the property is inherited by a lineal descendant or a brother or sister, or a lineal descendant of a brother or sister, the tax is to be 2 per cent on any value in excess of $2000, and not exceeding $10,000; 2½ per cent on any value in excess of $10,000, and not exceeding $25,000; 3 per cent on any value in excess of $25,000, and not exceeding $50,000; 3½ per cent on any value in excess of $50,000, and not exceeding $100,000; 4 per cent on any value in excess of $100,000, and not exceeding $500,000; and 5 per cent on any value in excess of $500,000. If the property is inherited by an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax is to be 3 per cent on any value in excess of $1000, and not exceeding $10,000; 4 per cent on any value in excess of $10,000, and not exceeding $25,000; 5 per cent on any value in excess of $25,000, and not exceeding $50,000; 6 per cent on any value in excess of $50,000, and not exceeding $100,000; 7 per cent on any value in excess of $100,000, and not exceeding $500,000, and 8 per cent on any value in excess of $500,000. If the property is inherited by any other person, natural or artificial, the tax is to be 4

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per cent on any value in excess of $500, and not exceeding $10,000; 5½ per cent on any value in excess of $10,000, and not exceeding $25,000; 7 per cent on any value in excess of $25,000, and not exceeding $50,000; 8½ per cent on any value in excess of $50,000, and not exceeding $100,000; 10 per cent on any value in excess of $100,000, and not exceeding $500,000, and 12 per cent on any value in excess of $500,000. The same results are obtained by this method as are obtained under the system of primary rates, as used under the Idaho law.

Administrators are required to file an inventory of the estate in the county court within three months after their appointment. The property is appraised either by two disinterested appraisers or by the county judge, and when it is appraised the county judge fixes the amount of the tax and the administrators deduct or collect the amount of the tax before delivering the property inherited. The amount collected under this act is paid to the state treasurer by the collector of taxes of each county.

In Massachusetts under the present law, adopted June 27, 1907, all property, corporeal and incorporeal, which passes by will or by the laws regulating intestate succession, or by deed, grant, or gift, except in cases of bona fide purchase for full consideration, is with certain exceptions, subject to a tax of 5 per cent on its value for the use of the commonwealth. The first exception made is for property given for the use of charitable, educational or religious societies or institutions, the property of which is by law exempt from taxation, or for property given in trust for any charitable purpose or for the use of any city or town for public purposes. Exceptions are also made depending upon relationships and such relationships are divided into two classes, A and B. Class A includes the husband, wife, lineal ancestor, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son or the husband of a daughter of a decedent. Property inherited by a member of class A is subject to a tax of 1 per cent on its value for the use of the commonwealth, if the value does not exceed $50,000; to a tax of 1½ per cent if its value exceeds $50,000 and does not exceed $100,000, and to a tax of 2 per cent if its value exceeds $100,000. Class B includes the brother, sister, nephew, or niece of the decedent, and property inherited by them is subject to a tax of 3 per cent on its value for the use of the commonwealth, if the value does not exceed $25,000; to a tax of 4 per cent if its value exceeds $25,000, and does not exceed $100,000, and to a tax of 5 per cent if its value exceeds $100,000. No distributive share of an estate passing to a husband, wife, father,

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mother, child or adopted child of the deceased, is to be taxed unless it exceeds $10,000 in amount, and no other distributive share is to be taxed unless its value exceeds $1000. In the former case, there must be a clear value of $10,000, and in the latter case a clear value of $1000 left after the tax is paid.

Massachusetts has taken into consideration the fact that other States have laws taxing inheritance and that conflicting jurisdictions will result unless proper exemptions are made for the property of residents and nonresidents.

An executor, administrator or trustee holding property subject to the provisions of the law must deduct the tax or collect it from the legatee or person entitled to the property, and the property cannot be legally delivered until the tax has been deducted or collected. The probate court may authorize administrators to sell the real estate of a decedent for the payment of the taxes. An inventory and appraisal under oath of every estate must be filed in the probate court or with the tax commissioner by the administrator within three months after his appointment. If recorded with the register of probate, it becomes his duty to file the inventory and appraisal in his office and send a copy to the tax commissioner. The tax commissioner then determines the value of the property and notifies the persons liable for the payment of the tax. His decision is not final and if any party interested in the succession, or the administrator wishes, he may make application to the probate court and have one or three disinterested appraisers appointed, who appraise the property at its actual market value. If the court finds that any tax remains unpaid, it becomes its duty to order the administrator to pay the tax, and no final settlement of an administrator's accounts can be allowed by the probate court unless the accounts show that all taxes have been paid on the property inherited.

The amendment as passed in Connecticut makes provision for property which belonged to deceased persons, nonresidents of the State. The law applies to all real estate and to tangible and intangible personal property and to stocks and bonds of corporations organized and existing under the laws of Connecticut, if the State in which the decedent resided imposes a similar tax. It is a minor amendment made necessary by conflicting jurisdictions.

The New Hampshire amendments correct some of the defects in the law as enacted in 1905 (c. 40), and especially improve the machinery of administration and collection. The administrators are required to make a more detailed statement of the heirs and their relationship to the

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decedent, and the register of probates is required to send a copy of every will containing legacies which are subject to a tax under the law, to the State treasurer. The most important amendment to the New Hampshire law pertains to the collection of the tax; it is here that the inheritance tax laws of most of the States are defective. The drafting of the law with all its details is simple enough compared with the real difficulty of carrying out its provisions. This is particularly true of the inheritance tax laws of the American commonwealth. New Hampshire has attempted to remedy this defect by authorizing the state treasurer to employ a suitable person to assist in the collection of the tax and to represent the State in all litigations dealing with the collection (approved April 5, 1907).

West Virginia has had a collateral inheritance tax for some time, and by amending two sections of the law has provided for a direct inheritance tax as well. The law, as amended, applies to the transfer of all property except such as is given for educational, literary, scientific, religious or charitable purposes or to the State or county or municipal corporation for public purposes. The tax is graduated according to relationships and not according to amounts. Property inherited by direct heirs is exempt to the amount of $20,000, and after that is subject to a tax of 1 per cent on its market value.

The principle of the inheritance tax is generally recognized as sound and if the law is carefully worded and the revenue provisions of the constitutions are not too narrow, the law is seldom declared unconstitutional by the courts. The tax is not often justified on the grounds that it is the State's best and only chance to make the personal property of the rich contribute its just share toward the support of the government, but rather, on the ground of the ability and minimum sacrifice theory of taxation.

ROBERT ARGYLL CAMPBELL.

National Incorporation of Associations doing Inter-State Business. A bill (S. 383) was introduced into congress on December 4, 1907, to provide for the incorporation, control, and government of associations organized to carry on business, entering into, or becoming a part of, interstate commerce.

Liquor Traffic. A bill (S. 46) providing that the federal government shall not grant liquor tax receipts to persons residing in prohibition territory, State or local, was introduced into congress December 4, 1907. If this bill is enacted, it will facilitate the enforcement of pro-

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hibition laws. The bill specifically provides that no collector of internal revenue shall receive any special tax from, nor issue any special tax receipt to, any liquor dealer, who does not exhibit a license or permit issued in accordance with the laws of the State or territory in which his trade or business is carried on. The dealer is required to register with the collector the date of his license or permit, the period for which it is issued, and the authority issuing the same.

Primary Elections. The supreme court of Illinois on October 2, 1907, declared the primary election law of that State unconstitutional (Rouse v. Thompson, 81 N. E., 1109). The law was enacted May 23, 1906, at a special session of the legislature called by Governor Deneen for that purpose, after the decision of the supreme court on April 5, 1906, which had declared the law of May 18, 1905, unconstitutional (People v. Election Commissioners, 221 Ill. 9, 77 N. E., 321). Thus in less than a year and a half the legislators of Illinois have suffered the humiliation of having two successive primary election laws, enacted by the same legislature, declared invalid, and partly for the same reasons.

The law of 1905 was declared invalid on the ground that it was a local and special law in that its provisions applied to Cook county in a manner different from that in which they applied to the rest of the State, and was, therefore, a violation of the provision of the Constitution of Illinois forbidding special legislation. The court also declared several specific sections to be in contravention of the constitution, among them being the provision which delegated to county central committees of political parties the power to determine whether candidates for county offices were to be chosen at such elections, and whether the selection of such officers was to be by plurality or majority vote. This position of the court assumes importance in the case recently decided, because a similar delegation of powers to county central committees is made the basis of the decision which overthrows the entire act. That it would have done so in the decision on the act of 1905 is evident if the court had not found a more important ground for its decision. The court declared in People v. Election Commissioners, mentioned above, that the "provision amounts to a delegation of legislative authority to county central committees to determine what the substantial features of the law shall be and is, therefore, void." The legislature at the special session of 1902 in trying to conform to the decision of the court ran upon one of the very rocks which the court had pointed out. The law delegated to county central committees the power to form "delegate districts" for the selection of delegates to party conventions, with restrictions upon

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the size and form of the district. The court held this to be a delegation of legislative power, contrary to the constitution. It maintained that "if it can be delegated at all, it must be delegated to some body recognized as capable of receiving such authority * * * It is impossible to sustain a delegation of any sovereign power of government to private citizens or to justify their assumption of it." Several other sections were found also to be in contravention of the constitution, but the court believed they could be eliminated without doing violence to the act as a whole, but the entire act being dependent upon the provision relating to the power to form delegate districts and determine the manner of elections, must therefore fall with the unconstitutional provision in question, and hence, the entire act was declared to be void. Shortly after this decision the legislature met in its adjourned session which had been put over for the purpose of considering the proposition of a deep waterway from Lake Michigan to the Mississippi river. The action of the court threw upon them the unexpected duty of providing a new primary election law in case they should not be willing to return to the system prevailing prior to 1905. The people of Illinois have been strongly in favor of direct primary legislation and a strenuous effort was made in the house of representatives at the session of 1907 to pass a direct primary law for cities. The effort failed through the unfavorable organization of the house. The provisions of the proposed Chicago charter, which gave a direct primary system to that city, went down in the legislature before the opposition of the political leaders. The legislature at the adjourned session in October, being under the moral necessity of providing some kind of a primary law, took up the consideration of the subject. The house of representatives passed a direct primary bill. This was amended in important particulars in the senate and the house refused to accept the amendments. A conference reported a compromise with an emergency clause, but it failed in the house to receive the two-thirds vote required for bills with an emergency clause attached. The emergency clause would make the law operative at once, whereas without it the law would not go into effect until July 1, 1908. The bill received the necessary majority required of ordinary bills and a fine legal question is presented, whether the bill must fall as a whole with the emergency clause.

The legislature remained in a state of suspended animation for several weeks, adjourning from day to day, finally taking a recess until January 14, 1908. At that time the primary election matter will be taken up and it is expected that some kind of a primary law will be speedily enacted.

JOHN A. LAPP.

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Stock Watering. A bill (H. R. 97) to prevent stock watering by combinations, consolidated companies, or trusts engaged in interstate commerce was introduced into congress December 2, 1907. The bill provides that whenever two or more corporations engaged in interstate commerce enter into any lawful merger or consolidation whereby the two or more corporations fall under one management, the management of such consolidated corporation or merger is prohibited from issuing a total volume of stock in excess of the sum total of the actual market value of bona fide outstanding stock in the several corporations six months previous to the date of consolidation or merger.

If any corporation or consolidated company violates the provisions of the act, then each officer and each member of any board of directors or board of management, or board of trustees, participating by vote, or act, or otherwise, in such unlawful overissue of stock, is to be deemed guilty of the crime of public cheating, and, upon conviction in any circuit court of the United States, is to be fined not less than $1000 and confined in a United States prison with hard labor for not less than twelve months.

Transportation Facilities. On December 4, 1907, a bill (S. 483) was introduced into congress, requiring railroad companies engaged in inter-state commerce to furnish promptly cars and other transportation facilities. The inter-state commerce commission is empowered to make rules and regulations for carrying the provisions of the act into effect.

National Incorporation of Transportation Companies. An elaborate bill (S. 499) for the formation of national corporations for railroad and navigation lines engaged in inter-state and foreign commerce was introduced into congress, December 4, 1907.

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NEWS AND NOTES

Municipal Affairs

WILLIAM BENNETT MUNRO

The annual conventions of the National Municipal League and the American Civic Association were held in Providence, R. I., during the week beginning November 18, last. Hitherto these two organizations have pursued the policy of holding separate annual meetings at different seasons of the year and in different sections of the country; but this year the experiment of joint meetings was tried for the first time. In every way the experiment was an unqualified success: the programme was more elaborate and more varied than ever before; and the attendance at the meetings exceeded the hopes of the most sanguine. Unusual interest in the proceedings was manifested by the citizens of Providence, and an encouraging number of the leaders of local public opinion listened to all of the more important papers.

Those to whom the choice of a place of meeting was committed were very fortunate in their selection of Providence, for not only were the facilities of Brown University placed at the disposal of the two organizations for all the meetings, but the local arrangements for entertaining the members were all that could be desired. The hospitality shown by Providence citizens very considerably contributed to the pleasure of the week.

After addresses of welcome had been made by Governor Higgins on behalf of the State, by Mayor McCarthy on behalf of the city, and by President Faunce on behalf of Brown University, the two organizations began their programmes on the afternoon of Tuesday, November 19, with a paper on The Battle for Betterment, by Hon. Clinton Rogers Woodruff of Philadelphia. This paper contained a comprehensive résumé of the more important developments in various American cities during the past year with comments upon their significance. A paper by Hon. Brand Whitlock, mayor of Toledo, O., on National Parties in Local Elections contained some pertinent observations upon the desirability and possibility of eliminating party lines in local politics. Mayor

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Whitlock's presentation of the matter furnished basis for a spirited discussion, some of those present urging that it was neither desirable nor practicable to cast adrift all the trammels of national party allegiance in civic elections. While this discussion was proceeding the members of the American Civic Association held a round-table conference on the subject of Definite Work for Small Communities. Among those participating were Prof. Albert Bushnell Hart of Harvard University, Mr. Frederic A. Whiting of Framingham, Mass., and Miss M. L. Dock of Fayetteville, Pa., a member of the Pennsylvania forestry commission.

The Tuesday evening meetings were devoted to papers upon the general subject of preserving natural beauty from commercial spoliation, and dealing more particularly with the work being done for the preservation of Niagara Falls. Equipped with stereopticon views several speakers gave addresses on this topic, among them Gen. Francis V. Greene of the Ontario Power Company, Mr. H. H. McCrae of the Electrical Development Company, Mr. Charles M. Daw of the New York State Reservation Commission, and Mr. John W. Langmuir of the Niagara Falls Park Commission of Ontario. The work of the McKim Commission was also described by Prof. Frederick Law Olmsted, Jr., of Harvard University, a member of this body. The addresses disclosed the strength of the popular movement which has rallied itself to the cause of preserving Niagara from the inroads of power corporations, as well as the readiness of the latter concerns to meet the leaders of this movement at least halfway.

On Wednesday morning the National Municipal League devoted its meeting to the general topic of local taxation. Hon. Lawson Purdy, chairman of the board of taxes and assessments in New York opened the discussion with a paper on A Model Plan of Taxation in which he described what he considered to be the proper subjects of local taxation and the proper method of imposing taxes upon these. Local communities, he thought, should have power to determine what subjects should be taxed locally, and also the rate at which these should be assessed, the legal necessity of uniformity being a great obstacle to an equitable and effective system of local taxation. Dr. Delos F. Wilcox, secretary of the Detroit Municipal League, followed with a well-written paper on The General Property Tax in Cities in which he emphasized the various points at which the tax is liable to encounter obstacles and especially its influence as tending to establish "a school of perjury and concealment." The speaker strongly advocated the entire abandonment of the general property tax both in theory and in practice. The Taxation

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of Savings Banks was the subject of the next address, given by Charles E. Sprague of New York, in which the incidence of this branch of taxation was discussed at length; and the morning's programme closed with a paper by Mr. H. T. Newcomb of Washington, D. C., on The Taxation of Railways. The speaker made a strong plea for the "gross earnings tax" as the only one free from insurmountable objections, as being collectible at a minimum of cost, and as the most capable of equitable adjustment.

At its separate meeting the American Civic Association held an informal conference upon Municipal Adornment and Parks. The discussion was opened by Dr. John Quincy Adams, secretary of the Municipal Art Commission of New York, who spoke of the scope, purposes, and achievements of this body. A paper dealing with The Railroad as a Factor in Civic Improvement was presented by Joseph T. Richards, general engineer of the Pennsylvania Railroad in which were pointed out many lines along which the municipalities and the railroad might, through coöperation, contribute substantially to the improvement of what is almost always an unsightly area in the community, the strips adjoining the railroad right of way. Along similar lines was the address of George W. Wildin, mechanical superintendent of the N. Y., N. H., and Hartford Railroad on the subject of The Smoke Nuisance on Locomotives. "A good, intelligent fireman," said Mr. Wildin, "is the only really successful smoke preventive." Part of the session was devoted to a discussion of the billboard nuisance, papers on this subject being read by Mr. Harlan P. Kelsey of Salem, Mass., and Edward T. Hartman, secretary of the Massachusetts Civic League. The subsequent discussions elicited opinions from a number of those present.

At the afternoon sessions of Wednesday the National Municipal League held a round-table conference on Electoral Reform. The subject was introduced by Mr. Thomas Raeburn White of Philadelphia, counsel for the Committee of Seventy, who emphasized the desirability of holding State and municipal elections in alternate years. Mr. Richard L. Gay, secretary of the Election Reform League of Massachusetts discussed the results of experience in the Bay State along this line, and Mr. Robert Treat Paine, Jr., of Boston, laid stress upon the fact that the evils of national and State party intrusion in municipal campaigns are not necessarily eliminated by legislation fixing a time separation between local and State elections. The discussion of the subject, which was highly interesting and profitable, was continued by Mr. Elliott H. Pendleton of Cincinnati and Mr. George Burnham, Jr., of Philadelphia. Hon. Robert Luce, member of the Massachusetts legislature, then gave an

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interesting description of the workings of the Massachusetts joint primary law, or "Luce Law" as it is popularly called, of which he was the sponsor. This paper was discussed by Mr. Horace Deming of New York and by Hon. Charles J. Bonaparte, attorney-general of the United States, the latter making a plea for the simplification of nomination and electoral procedure.

At the Wednesday evening joint session of the two organizations President Bonaparte of the National Municipal League delivered his annual address, the subject of which was Government by Public Opinion. The audience was very large and appreciative. "After all," said Mr. Bonaparte, "the most effective instrument of coercion possessed by society against its weaker or more dangerous members is the influence of public opinion." The address embodied a plea for a more impartial and faithful reflection of public opinion by the press. "There is one thing that the newspapers must do if they would be, in the field of politics or in any other, an agency for good, and that is to think and to tell the truth. No worthy end was ever achieved through deception, whether of ourselves or of others."

The proceedings of Thursday morning related to the Forces Moulding the City of the Future, with addresses by President W. H. P. Faunce of Brown University, Hon. Homer Folks of New York, and Hon. Clinton Rogers Woodruff of Philadelphia. In the afternoon there was a discussion of the various experiments now being made in the direction of simplifying the framework of municipal government. The Galveston plan of city government was described in a paper by Prof. William Bennett Munro of Harvard University, in which the merits and defects of the Texan system, so far as these could be judged in the light of Galveston's experience, were set before the members. A paper by Mr. Silas B. Allen of Des Moines, Iowa, was read by Eliot H. Goodwin of New York, descriptive of the provisions in the new Des Moines charter. In this the writer emphasized the value of the provisions in the charter relating to the use of the initiative, the referendum, and the recall. Rear-Admiral F. T. Chadwick followed with an explanation of the Newport system of city government. The speaker believed this plan to be superior both in theory and in practice to the Galveston and Des Moines systems in that it observed a sound canon of local government in keeping separate the appropriating and the expending authorities. Admiral Chadwick thought that the fusion of large powers in the hands of a small commission afforded, if not subjected to the strictest supervision, unlimited possibilities of evil.

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The sessions of the American Civic Association during this period were given over to conferences on the subject of Work Among the Children in Large Cities, and among the speakers were Mrs. Edwin F. Moulton of Warren, O., Miss Mabel Hill of Lowell, Mass., Prof. Charles F. Kent of Yale University, and several others. Considerable attention was given to the matter of instruction in civics in the public schools and the consensus of opinion was that the association ought to undertake an active propaganda along this particular line.

Members of the two associations joined forces on Thursday evening in a banquet at The Eloise, at which short addresses were made by several of those who had taken a leading part in the regular sessions. The affair was unusually successful as were the other social features of the convention among which were a smoker at the Brown Union and a reception at the home of President W. H. P. Faunce. The whole arrangements for the convention were in the hands of Hon. Clinton Rogers Woodruff, secretary of the National Municipal League, to whom much of the credit for their successful outcome is due. An invitation to hold the next annual gathering of the two associations at Portland, Me., was received from the city authorities and from the board of trade; and it is likely that this place will be chosen. Both associations reëlected their chief officers to serve another term.

Several months ago the mayor of Boston, acting in concurrence with the other organs of city government, asked several of the leading unofficial organizations of the city, among them the chamber of commerce, to select representatives to a finance commission, the duty of which body it should be to make a thorough and impartial investigation into the financial condition of Boston and to report the results of their investigations together with recommendations as to the means whereby the municipal expenditures might be reduced without impairing the efficiency of civic administration. This commission was duly organized, its membership comprising some of the most prominent business men of the city, and the investigation has already covered a number of important civic departments. Some preliminary reports have been made to the mayor and some recommendations offered. On the whole the work of the commission has not disclosed any widespread corruption or glaring inefficiency; at the same time it has brought to light a good deal of minor extravagance, incompetency, and evasion of the law by officials of the civic administration. The commission's disclosures undoubtedly contributed substantially, if not decisively, to the outcome in the

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recent mayoralty elections at which the Fitzgerald administration was ousted from office. Mayor John F. Fitzgerald was opposed for reëlection by two candidates, one of whom was supported by the regular republican organization, the other by the Independence League. This division of the forces opposing the mayor's reëlection seemed likely, at one stage, to guarantee his hold on the office; but as the election returns showed, the candidate of the Independence League drew a large vote from the regular democratic ranks, thus ensuring the election of Mr. George A. Hibbard, the republican nominee, by a plurality of slightly over two thousand votes. Mr. Hibbard had the support of most of the substantial business men of the city and his election affords hope that the municipal administration of Boston will be noticeably improved during the ensuing two years.

The Norfolk League of American Municipalities, at its recent convention, singled out the following features as worthy of emphasis in the work of the league for the coming year: (1) the desirability of securing adoption by towns and cities of some system of uniform accounting in order that expenditures may be susceptible of comparison; (2) the need of insisting more rigorously upon the principle of municipal "home rule" and of obtaining for municipalities a larger discretionary power in matters relating to local administration; (3) the advisability of instructing and educating the masses of city voters not in the principles of good citizenship, but in a proper understanding of the powers of municipalities, and the duties of officials thereunder.

President C. W. Eliot of Harvard University has contributed to the October number of *The Worlds' Work*, an instructive article on city government by commission.

When the general charter law enacted by the legislature of New York State for cities of the "second class" goes into operation on January 1, 1908, there will be seven cities included in this category, namely, Albany, Rochester, Troy, Utica, Schenectady, Syracuse, and Yonkers. Each of these municipalities has a population of more than 50,000 and less than 250,000.

M. Lepiné, the efficient prefect of police of Paris, France, has arranged that a certain number of the police of that city shall be taught English, German and Spanish in order that they may the more effectively perform the work of directing strangers about the city. These policemen will be distinguished from their less accomplished comrades by an arm

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badge bearing a reproduction of the flag of the country whose language they have mastered. They will be placed on duty at the railway terminals, and in those sections of the city which are most commonly frequented by foreign visitors.

As a result of its investigations the civil service commission of Chicago has decided to establish a "labor bureau" which will have exclusive charge of the civic labor service. Registration of eligible laborers will be conducted according to a geographical classification so that laborers residing in one part of the city will not be certified to work in districts inconvenient to them.

Among the delegates recently elected to the Michigan constitutional convention is Prof. John A. Fairlie of Ann Arbor, professor of administrative law in the University of Michigan, and secretary of the League of Michigan Municipalities. In connection with the work of the convention Professor Fairlie has contributed to a recent number of the *Michigan Law Review* a timely article, entitled, Some Suggested Changes in the Constitution of Michigan.

In its recent report the public ownership commission of the National Civic Federation expresses the conclusion that no scheme of municipal operation is likely to be highly successful if it does not provide, among other things, for the "exclusion of political influence and personal favoritism from the management of the undertaking." A system of civil service reform is thus given emphasis as a necessary preliminary to satisfactory municipal operation of public utilities.

The Civic League of Albany, N. Y., has established a publication in the interest of municipal reform under the title of *The Albany Citizen.*

A voters' league has been organized in Cincinnati for the purpose of investigating and passing upon the records of all candidates put forward by the party organizations for municipal office. It is established, in general, along the lines followed by the Good Government Association of Boston.

Mayor George W. Guthrie of Pittsburg has appointed the first Pittsburg civil service commission under the new civil service law.

The twenty-seventh annual meeting of the National Civil Service Reform League was held at Buffalo, N. Y., on November 7, and 8. Hon. Joseph H. Choate was elected president to succeed Dr. Daniel C. Gilman who declined reëlection. A number of the papers dealt with

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the question of civil service reform in cities, a phase of the whole question to which the league is now giving a large share of its attention.

Some years ago the National Municipal League published, through the Macmillan Company, a volume entitled *A Municipal Program.* This book is now out of print and in view of the favorable reception accorded it and its important influence in connection with the framing of charters in several States, the league has arranged for a new and revised edition. The work of revision is in the hands of a committee headed by Mr. Horace E. Deming of New York.

The League of American Municipalities has become sponsor for a compilation of data relating to a large number of American cities which has been published under the title *An Authentic Summary of Civic Progress and Achievements.* The work includes much interesting information concerning the activities of sixty-seven cities of varying size.

The voters of Toronto, Canada, in November last, approved a proposition to borrow a sum of over three-quarters of a million dollars for an extension of the waterworks system. Out of a registered vote of over 32,000 only 1224 ballots were cast; nevertheless the proposal was declared to have been carried. The situation does not appear to emphasize the success of the practice of holding a referendum on all questions relating to civic borrowing, a requirement imposed upon the cities of Ontario by the provincial legislature.

The general assembly of Missouri in its special session in the spring of 1907 passed an "enabling act" authorizing all cities of the State to regulate by ordinance the charges for gas, telephone, street-railway, and other public services and to establish commissions with power to investigate the books of companies operating such utilities; summon witnesses and recommend rates to the council; the right of the companies to obtain judicial determination as to the reasonableness of the rates fixed by ordinance is secured. St. Joseph is so far the only city which has taken a definite step towards the exercise of the authority conferred by the statute; her council on December 9 passed an ordinance providing for a public utilities commission to be composed of the mayor, the president of the council, and three members of the council selected by the president of the council.

The movement in Kansas City for the creation of such a commission has so far been unsuccessful because of the failure of the two houses of

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the council to concur upon a plan for the constitution of the commission. The measure which is championed by Mayor Beardsley and which has passed the upper house provides for a bi-partisan commission of six members appointed by the mayor subject to confirmation by the upper house. The lower house has refused to ratify this measure and proposes instead a commission of three members, each house to appoint one of its own number upon the commission, the third member to be an outside expert nominated by the mayor and confirmed by both houses.

Several bills to establish a public utilities commission have been introduced in the St. Louis assembly and have been referred to a committee which is directed to recommend a plan for the constitution of such a commission.

The project for the construction in St Louis of a free municipal bridge across the Mississippi river seems now, after nearly a two years' campaign through the newspapers and mass meetings, well on its way to realization. At a special election in June, 1906, a municipal ordinance, providing for the issue of bonds to the amount of $3,500,000 for the purpose of building the bridge, was approved by a popular vote of 51,000 to 6000. In that month, also, the city obtained from congress the franchise to use the Illinois bank of the river for the eastern terminal of the bridge. Then after a year's delay—in the course of which time the supreme court had confirmed the validity of the bond issue—a bill fixing the site of the bridge passed the upper house of the municipal assembly—June, 1907. The bill remained in the lower house five months; several citizens' meetings were held demanding immediate action, and the bill was finally, on November 8, passed by a large majority. Mayor Wells vetoed it on the following grounds: that the location was unsuitable with regard to its availability for steam railway, street car, wagon, and pedestrian traffic; that the plans outlined in the bill would require an expenditure of $5,000,000 instead of $3,000,000, that the annual cost of maintenance as compared with the probable usefulness would be too great; and that there were serious technical defects in the general design projected in the bill. The bill was immediately repassed over the veto by a practically unanimous vote in both houses. Subsequently an ordinance was passed providing for the sale of $1,000 000 worth of bonds, and authorizing the board of public improvements to secure the consent of the government to the site selected. When this is obtained the comptroller will proceed to the issue and sale of the bridge bonds, and plans for the bridge will be prepared under the super-

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vision of the board. The bridge will provide free passage for pedestrians, wagons, street railways, and steam railroads.

PERSONAL AND BIBLIOGRAPHICAL

J. W. GARNER

The fourth annual meeting of the American Political Science Association was held at Madison, Wisconsin, December 27–31. At the same time and place annual meetings were held of the American Historical Association, the American Economic Association, the American Sociological Society, the American Association for Labor Legislation, and the Mississippi Valley Historical Association. The entertainment of the members of the associations was undertaken by the Social Sciences Club of the University of Wisconsin and the Wisconsin State Historical Society, and was bountiful to an extreme. A large number of the members of the Political Science Association were registered as in attendance and the papers read were uniformly interesting and valuable. The addresses will be published during the early spring as volume four of the Proceedings of the Association. The several sessions were devoted to a discussion of the following subjects: The Latin-American Republics, the Newer Institutional Forms of Democracy, The Government of Dependencies, Comparative Legislation, The Administration of Punitive Justice, and Public Service Commissions.

The secretary of the association reported a gratifying increase in membership during the year, the present enrollment being a trifle over six hundred as compared with three hundred and forty a year ago. So expensive, however, is the publication of the REVIEW, that the association is not yet self-supporting. It is hoped, however, that the membership will continue to increase at the same rate during the current year. Present members of the association are earnestly urged to send to the secretary the names of those of their associates or acquaintances who it is thought may be interested in the work and publications of the association, in order that he may communicate with them by letter, circular or specimen copy of the REVIEW. Experience has shown that it is almost wholly in this personal manner that new members have been obtained.

In order that, beginning with 1909, the volumes of the REVIEW may correspond with the calendar year, it was decided to omit the publication of the August, 1908, number and have the November, 1908, issue consitute the fourth number of volume two. It was voted to hold the

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fifth annual meeting of the association in Richmond, Virginia, though the executive council was authorized, at its discretion, to hold one session in Washington, D. C. The following officers for the year 1908 were elected: President, James Bryce; first vice-president, Albert Bushnell Hart; second vice-president, H. A. Garfield, third vice-president; Paul S. Reinsch; secretary and treasurer, W. W. Willoughby. Profs. Isidor Loeb, J. W. Jenks, and C. E. Merriam were elected to the executive council to fill the places of Dr. H. P. Judson, Prof. B. F. Shambaugh, and Prof. J. A. Fairlie.

Prof. J. W. Garner of the University of Illinois was selected as a member of the board of editors of the REVIEW to fill the vacancy occasioned by the resignation of Dr. Robert H. Whitten.

Mr. Ellery C. Stowell has been appointed instructor in international law at George Washington University. Mr. Stowell is a graduate of Harvard, has the degree of *Licencié en droit* from Paris and has completed the requirements for the degree of *Docteur en droit*. He attended the recent Hague conference as secretary of the committee of which Prof. Martens was chairman.

Dr. Adna F. Webber of Albany, N. Y., and Mr. Delos F. Wilcox of Michigan have accepted appointments to expert positions in connection with the New York public utilities commission.

Prof. C. H. Huberich of the Leland Stanford University law school recently visited Australia and New Zealand for the purpose of collecting material for a new edition of Borchardt's *Commercial Laws of the World*, now appearing in Berlin under the editorship of Prof. Joseph Kohler.

The Nobel peace price this year was divided and awarded equally to Ernesto Teodor Moneta of Italy and Louis Renault of France. Signor Moneta has been prominent as a worker in the interest of peace for some years and last year was elected president of the fifteenth universal peace congress which met at Milan. M. Renault is the well known professor of international law in the Paris *École des Sciences Politiques*, is a member of the French Institute, legal adviser to the French foreign office, a member of the Hague permanent court of arbitration, was a delegate to both of the Hague conferences, and is the author of various works on international law and diplomacy.

Hon. James Brown Scott solicitor of the department of state and delegate to the second Hague peace conference will deliver a course of

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lectures at the Johns Hopkins University during the month of February on the work of the conference.

Prof. E. W. Kemmerer of Cornell University has been appointed managing editor of the *Bulletin* which is to be published by the American Economic Association, Prof. C. W. A. Veditz having been obliged by the pressure of other duties to resign the position. Four numbers of the *Bulletin* will be issued during the present year. The first number will appear on or before May first.

A supplementary volume to the second volume of *Jones' Index to Legal Periodicals* (1899), bringing that valuable reference work to date, was arranged for at the last meeting of the law librarians of the United States. Beginning also with January, 1908, a quarterly index will be issued.

With the October, 1907, issue, the first volume of *The American Journal of International Law*, (published for the American Society of International Law by Baker, Voorhis & Co. New York. Vol. I, pp. 1079; Supplement, Vol. I, pp. 425) is completed, and an opportunity afforded to call attention to its value to students of international law and politics. The *Journal* is the organ of, and is published by the newly established American Society of International Law, which had its first annual meeting in Washington, D. C., last spring. Hon. James Brown Scott, solicitor of the department of state, is the managing editor of the *Journal* and the board of editors is composed of Prof. Charles Noble Gregory, Mr. Robert Lansing, Prof. J. B. Moore, Hon. W. W. Morrow, Prof. L. S. Rowe, Secretary Oscar S. Straus, Prof. George G. Wilson, Prof. Theodore S. Woolsey, and Hon. David J. Hill, the last named acting as European editor. The *Journal* proper contains, besides leading articles and book reviews, editorial comment upon current international topics, citations from judicial decisions involving questions of international law, references to periodical literature, lists of public documents relating to international law, and a chronicle of international events. The list of public documents is furnished by Mr. Philip De Witt Phair of the Library of Congress and the chronicle by Mr. Henry G. Crocker. Mr. Crocker has greatly added to the value of his *chronique* by appending to each entry references to both primary and secondary sources of information. With each number of the *Journal* is issued a *Supplement*, containing important official documents, domestic and foreign, of an international interest. In general these documents are of recent date but in some instances the commendable policy has been followed of reprinting older papers

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of especial importance, as, for examples, the Declaration of Paris, the Geneva Convention, the Declaration of St. Petersburg, etc. These supplements are paged, sewed and indexed separately from the *Journal*, thus permitting the issues of each year to be bound as an independent volume. The mere statement of the material thus furnished by this *Journal* is sufficient to demonstrate its value, but when to this is added the fact that the leading articles have been almost uniformly of a high scientific character, that the editorial comments have been discriminative and illuminating, and that the other departments of the *Journal* have been ably conducted, it is clear that students and publicists would be ungrateful indeed did they not recognize the obligation under which they have been placed by the managers of the *Journal* and by the society which publishes it.

Dr. Charles A. Beard, Blumenthal professor of politics in Columbia University, recently inaugurated the practice of supplementing the theoretical instruction of the class room by practical lessons in politics, through the agency of mock conventions, committees, the drafting of platforms, and the like. The success of the experiment has attracted wide attention and illustrates the possibility of teaching the science of government in a practical way.

An effort is being made to raise a Frederick William Maitland fund for the promotion of research and instruction at Cambridge in the history of law and legal institutions. A committee was recently appointed at Trinity College to solicit subscriptions, among the members being the deans of a number of American law faculties, as well as various American scholars and lawyers.

Among the announcements of the Macmillan Co. are J. A. Fairlie's *Essays in Municipal Government*; Kirkpatrick's *School Administration*; and Hannis Taylor's *Science of Jurisprudence*.

New books announced by P. S. King & Son include *The Citizen and His Duties* by W. F. Trotter; *Old Age Pensions in Theory and Practice* by William Sutherland; *Socialism* by J. Ramsey Macdonald, M.P; *Political Institutions in Egypt* and *The Case for Constitutional Reform in Egypt*, both by H. C. Fox Bourne.

Right Honorable James Bryce, British Ambassador, in an address delivered January 24, 1908, at Carnegie Hall, New York City, before the State Bar Association of New York, dealt with Methods and

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Conditions of Legislation. At the same meeting Mr. Choate gave a résumé of the second Hague peace conference.

Among the recent publications of the New York Bureau of Municipal Research are: *Some Phases of the Work of the Department of Street Cleaning*; *How Manhattan is Governed; Making a Municipal Budget*, and *A Department of Municipal Audit.*

President A. T. Hadley's Kennedy lectures before the New York School of Philanthropy have been published under the title *Standards of Public Morality* (Harper & Brothers). The subjects of the lectures are: The formation of public opinion, the ethics of trade, the ethics of corporate management, the working of our political machinery, and the political duties of the citizen.

New editions of Charles Mulford Robinson's *Modern Civic Art* and *The Improvement of Towns and Cities* have recently appeared.

A third section, revised and enlarged, of Kirkup's *An Inquiry into Socialism* has been issued by Longmans, Green & Co., 1907, pp. 216. The work has been out of print since 1890.

Prof. George E. Howard of the University of Nebraska has published (Univ. of Neb. Press) two valuable analytical reference syllabi, the one dealing with general sociology (pp. 86), the other with comparative federal institutions (pp. 133).

A second edition of Dr. Max West's valuable monograph on *The Inheritance Tax* (Columbia University Studies in History, Economics and Public Law, vol. iv, no. 2) has appeared. The newer developments in this form of taxation, here and abroad, have been noted, with the result that the study has almost doubled in length.

Prof. Jesse S. Reeves of Dartmouth College has brought out through the Johns Hopkins Press a monograph entitled *American Diplomacy Under Tyler and Polk*, being a series of lectures delivered a year ago on the Albert Shaw foundation at the Johns Hopkins University.

In a book entitled *The Fundamentals of American Government* (Rochester: The Lawyers' Coöperative Publishing Co. 1907, pp. 232) Mr. Charles Z. Lincoln has sought to furnish in convenient form to foreigners intending to become American citizens, the four great documents—Magna Charta, Declaration of Independence, Articles of Confederation, and the Constitution—upon which our government is founded. The author

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supplies a short introduction, and adds brief explanatory notes to certain of the clauses of the Constituion.

Peace Given as the World Giveth; or The Portsmouth Treaty and Its First Year's Fruits (Baker & Taylor Co.) is the title of a small brochure of eighty-six pages, in which Mr. John Bigelow essays to show by reviewing the disturbances in Russia since the war with Japan that it would have been better, even from the viewpoint of expense of life and property, had President Roosevelt not interfered but allowed the war to continue until, through exhaustion, the governing powers of Russia were obliged not only to sue for peace, but to grant the liberal reforms for which the people are now struggling.

Military Law and the Procedure of Courts-Martial, by Edgar S. Dudley, judge advocate of the United States army, and professor of law at the Military Academy at West Point, has appeared from the press of John Wiley and Sons, New York (1907, pp. 650). The work is prepared primarily for use as a text book in the Military Academy at which the author is professor. The work should be valuable not only for that purpose, but as a handbook of law for all persons concerned with the military arm of our government. In an appendix are given the articles of war and general forms. The index is an exceptionally good one.

Mr. Frederick Trevor Hill in a volume entitled *Decisive Battles of the Law* (New York: Harper & Brothers. 1907. Pp. 268), has given in an entertaining and yet instructive manner an account of the following judicial or quasi-judicial contests: United States v. Callender, United States v. Burr, Commonwealth of Virginia v. John Brown, Scott v. Sanford, the Impeachment of Andrew Johnson, the *Alabama* Arbitration, the Hayes-Tilden contest, and the People of Illinois v. Spies.

A second, greatly enlarged edition of J. Ellis Barker's *Modern Germany: Her Problems, Political and Economic; Her Policy, Foreign and Domestic; Her Ambitions and the Causes of Her Success* has lately been published by Smith, Elder & Co. of London.

Mr. Courtney S. Kenney, whose *Outlines of Criminal Law* was noted in the last issue of the REVIEW has been promoted to the Downing professorship of law at Cambridge to succeed the late Professor Maitland. Mr. Harold D. Hazeltine, a graduate of Brown University and of the Harvard law school, has succeeded Professor Kenney as reader of English law at Cambridge, a chair originally created for Maitland.

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Mr. Hazeltine holds the degrees of J.U.D. from Berlin, and M.A. from Cambridge, having spent six or seven years abroad as a student.

Mr. H. A. Egerton, Beit professor of colonial law at Oxford is the editor of a new work entitled *Canadian Constitutional History*, being a collection of speeches and dispatches with introductory and explanatory notes. (London: John Murray).

A new edition of Boyd's *Cases on Constitutional Law* published ten years ago has recently appeared from the press of Callaghan (Chicago).

John Westlake, K.C., LL.D., Whewell professor of international law in the University of Cambridge, has completed Part II of his admirable work on international law, the first part of which appeared thirteen years ago. The present volume deals mainly with the law of war. The American publishers are G. P. Putnam's Sons.

A biographical essay on the life of *Samuel Freeman Miller*, of the supreme court of the United States, written by Charles Noble Gregory, dean of the Iowa law school, is published in the *Iowa Biographical Series*. In addition to the biography the volume contains three addresses by Justice Miller and a calendar of his judicial opinions. Dean Gregory places Miller next to Marshall as an interpreter of the Constitution, and this view is supported by the opinions of Chief Justice Chase and others. During his connection with the supreme court, from 1862 to 1890, Justice Miller gave more opinions construing the Constitution than had previously been announced by the court during its entire existence. The appearance of Justice Miller's name in an Iowa biographical series is due to the fact that he began the practice of law in that State. He was a native of the State of Kentucky and practiced medicine there for ten years before removing to Iowa.

Prof. John R. Commons' *Races and Immigrants in America* (The Macmillan Co.) is a suggestive and well conceived study of the part which racial influences have played in American life. He points out that no other nation in ancient or modern history can show within its borders so varied an aggregation of race elements. The extent and the directions in which race influences enter into industry, politics, and social life are clearly and forcefully depicted. The problem of amalgamation and assimilation Professor Commons rightly considers a mighty task indeed. He believes that the problem of distribution can be best solved through the action of private employment agencies rather than through the efforts of the national government.

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Ship Subsidies by Walter T. Dunmore of Western Reserve University is one of the best of the Hart, Schaffner and Marx prize essays for 1907 (Houghton, Mifflin & Co.). Mr. Dunmore reviews the history of American shipping and the present status of our merchant marine, examines critically the various remedies suggested for its rehabilitation and closes with some well thought out suggestions of his own. He recommends the policy of "free ships" for the foreign trade, the unconditional removal of the tariff from shipbuilding material, an intelligent application of the postal subsidy act of 1891 and the application of discriminating duties on commerce carried on through indirect trade.

Mr. Percy Ashley's *Local and Central Government* (E. P. Dutton) is a useful though not a scholarly comparative study of local and central government in England, France, Prussia, and the United States. The treatment of the United States is limited almost entirely to a short chapter on the government of American cities. The central governments of the other countries considered are scantily treated except in so far as they exert a control over the local governments. There is a very good chapter on administrative law, and the treatment of local institutions in England, France, and Germany is probably the best to be found in any general treatise published in English with the exception of that in Goodnow's *Comparative Administrative Law.*

Mr. Asher C. Hinds, the author of the *Parliamentary Precedents of the House of Representatives* first published some ten years ago, is preparing a new and more elaborate work of the same character which is to be published by the government at an early date in seven volumes of about eleven hundred pages each. The quota of each member of congress for distribution will be three copies.

The Procedure of the House of Commons by Joseph Redlich, professor in the law faculty of the University of Vienna, a valuable work in three volumes dealing with English parliamentary procedure, has lately been translated into English from the German by A. E. Steinthal, barrister-at-law. The English edition contains an introduction and a supplementary chapter by Sir Courtney Ilbert, clerk to the house of commons and a high authority on parliamentary procedure.

The State Historical Society of Iowa has recently issued a volume of 455 pages containing the *Proceedings of the Fiftieth Anniversary of the Constitution of Iowa* held at Iowa City in March, 1907. The book contains three addresses of interest to students of political science, namely:

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A Written Constitution in Some of its Historical Aspects, by Professor Andrew Cunningham McLaughlin; *The Relation between General History and the History of Law*, by Professor Eugene Wambaugh; and *The Constitutional Convention and the Issues Before It*, by Judge Emlin McClain.

The society's second report on the public archives contains an appendix of 350 pages in the nature of a guide to the administrative departments, officers, boards, commissions, and public institutions of Iowa from the organization of the territory in 1838 to the adoption of the code in 1897. Both volumes were prepared under the editorial direction of Prof. B. F. Shambaugh.

Federal Anti-Trust Decisions by Jas. A. Finch is the title of a large two volume collection of cases for the main part growing out of the enforcement of the Sherman act down to 1906. The work is accompanied by an index digest of 167 pages (Washington: The Government Printing Office).

The Proceedings of the National Arbitration and Peace Congress (edited by the secretary, 23 West Forty-fourth Street, New York) which met in New York, April 14 to 17, 1907, is the title of a handsomely illustrated volume containing all the addresses, some one hundred and twenty five altogether, delivered at the nine sessions of the congress and at the banquets held at the Hotel Astor and at the Waldorf-Astoria. In addition to the formal addresses there is a collection of letters and telegrams received from statesmen and publicists from various parts of the world.

A convenient handbook for students of English municipal government is Mr. A. E. Lauder's *Municipal Manual* (P. S. King & Son) being a description of the constitution and functions of urban local authorities. The treatment of the subject is arranged under eight heads:—constitution and general powers of local governing bodies, public health, highways and communication, protective and regulative powers, extra municipal powers and services, financial powers, education and poor relief.

In a treatise on the law of municipal ordinances (Callaghan & Company, Chicago) Mr. Eugene McQuillin of the St. Louis bar deals with almost every phase of the law of municipal ordinances and gives a concise statement of the legal rules and principles governing the enactment, interpretation and enforcement of municipal legislation. The work is well indexed and supplied with references, catch words, notes, etc.

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A Book of American Municipalities, being a summary of civic progress and achievements, published by the League of American Municipalities (116 pages) has been compiled for the purpose "of presenting to the public reliable information about American cities in order to kindle the interest of citizens in their cities and thus promote good government and civic progress." It contains a considerable amount of statistical and descriptive information concerning the affairs of sixty-seven municipalities. It is to be regretted that there is not published in this country such a work as the *Municipal Year Book* which appears annually in England.

The subjects announced for the Hart, Schaffner and Marx prize essays in economics for the year 1908 are as follows: 1. An examination into the economic causes of large fortunes in this country. 2. The history of one selected railway system in the United States. 3. The untouched agricultural resources of North America. 4. Resumption of specie payments in 1879. 5. Industrial combinations and the financial collapse of 1893. 6. The case against socialism. 7. Causes of the rise of prices since 1898. 8. Should inequalities of wealth be regulated by a progressive income tax? 9. The effect of the industrial awakening of Asia upon the economic development of the west. 10. The causes of the recent rise in the price of silver. 11. The relation of an elastic bank currency to bank credits in an emergency. 12. A just and practicable method of taxing railway property. The prizes are four in number, the first being $1000 in cash, the second $500, the third $300 and the fourth $150. Inquiries as to the conditions governing the competition should be addressed to Prof. J. L. Laughlin of the University of Chicago.

A society called the Civic Forum designed to exert a national and an international influence for higher standards of civic and social service and to promote international good will through addresses by eminent American and foreign publicists and statesmen has been founded in New York. The first address was delivered by Governor Hughes of New York on November 20. Others who have made addresses are William H. Taft, W. J. Bryan and Prof. Paul Milukov of St. Petersburg. Dr. Lyman Abbott is chairman of the council, and among the vice presidents are Secretary Taft, Secretary Straus, Edward Everett Hale, Bishop H. C. Potter, Samuel Gompers, John Mitchell, and Justice David J. Brewer.

The International Sanitary Congress, which held its sessions in Rome during the second week in December, adopted resolutions looking

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toward the creation at Paris of an international bureau for the collection of information concerning the laws and regulations relating to contagious diseases in the various countries and also for the keeping of statistics of such diseases, particularly bubonic plague, cholera and yellow fever. A monthly bulletin is to be published by the bureau.

An international juvenile court society has been organized under the laws of Illinois with Judge Ben B. Lindsey of Denver as president and a board of directors consisting of some twenty or more of the leading social workers of the country. It is designed to be a clearing house for information concerning every phase of juvenile criminology and penology and especially in regard to the adoption of more scientific methods for dealing with juvenile offenders.

The first national tax conference which met at Columbus, Ohio, the second week in November was attended by the governors of several States, many tax reformers and experts and a goodly number of legislators, State officials, and municipal executives. A number of the more pressing questions of State and local taxation were considered by the conference and resolutions were adopted recommending to the legislatures of the several States the enactment of legislation looking to the establishment of more rational systems of taxation. The proceedings of the conference are now in course of publication.

Histoire et Droit by Paul Robiquet is a two volume collection of essays on various historical and legal questions. Students of political science may be interested in an essay in the first volume entitled *L'organisation municipal de Paris sous l'ancien régime* and two essays in volume two, entitled *La révision constitutionnel de 1884 et la loi electorale du Sénat;* and *La loi 16 juin 1885 sur le scrutin de liste* (Paris: Hachette, 1907).

A contribution to the literature of colonial public and private law has been made by J. V. de Bryans a doctor of law and an officer in the French colonial service, under the title *Condition juridique et politique des indigènes dans les possessions coloniales* (Paris: Leclerc). It is mainly a study of the legal and political status of natives in the French colonies, but deals also with the theories of colonization, the local law and its application to indigenats.

M. L. Rouget's *L'expansion coloniale au Congo français* (Paris: Leclerc), is a detailed account of the administrative system prevailing in the French Congo, a discussion of French policy in Africa and a description of the resources, physical characteristics of the country, etc.

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In the two volume work entitled *Les républiques parlementaires* by Albert Saubies and Ernest Carette (Paris: Flammarion), the authors recognize two forms of government: republics and monarchies, the former being capable of division into three types, democratic republics, representative republics and parliamentary republics. The second volume, which has just appeared, is devoted to a study of democratic republics, the only existing example of which according to the authors, is Switzerland. Other volumes are announced to follow.

Charles Bastide, a French professor, has lately published a work of wide research and scholarship entitled *John Locke, ses théories politiques et leur influence en Angleterre* (Ernest Leroux, Paris), being a study of Locke not so much as a philosopher but as the apologist of the revolution of 1688 and an apostle of tolerance. His influence upon the whig theory of religious liberty and constitutionalism in government, the way in which his liberal ideas took root and developed in England, how parliamentary government triumphed over absolutism, and how the problem of the relation of Church and State was solved are the principal themes discussed.

Les doctrines politiques de Robespierre (Paris: Michel and Forgeot) by J. Deymes-Dumé a French advocate and doctor of law, is the title of a new contribution to the history of political theory. The purpose of the present work is to expound the system and analyze the political theories of Robespierre, particularly those relating to representation, constituent power, legislative power, etc., a purpose which in the opinion of the French critics has not been successfully realized.

L'oeuvre colonial algérienne et politique (Paris: Flammarion) is the title of a two volume collection of the speeches and writings of M. Etienne former minister of France for the colonies. The speeches and dispatches relate mainly to the former minister's policy in Algeria and were published through the initiative of some of his friends in commemoration of the twenty-fifth anniversary of his entrance into parliamentary life.

R. Merlin, librarian and archivist of the Musée Social has written a treatise entitled *Le Contrat de travail* (Paris: Alcan), a detailed study of the labor contract in its various aspects, wages and salaries, conditions, obligations, termination, etc.

Montesquieu, ses idées et ses oeuvres d'après les papiers de la Brède, by M. Barckhausen, a professor in the law faculty of the University of

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Bordeaux is another addition to the already large number of books relating to the great French philosopher. Albert Sorel's standard work was at the time of its publication supposed to contain all that was worth saying about Montesquieu but the recent discovery of new material, especially five volumes of papers belonging to his descendants at the Château de la Brède, has enabled M. Barckhausen to add something more to our stock of knowledge regarding Montesquieu's political theories (Paris: Hachette, 1907).

A new edition (the third) of Gumplowicz's *Allgemeine Staatslehre* which first appeared in 1877 has been published. The new edition is dedicated to Professor Lester F. Ward (Wagner's Buchhandlung, Innsbruck, 1907).

A study of the genesis of German national states has been published by Fredrich Meinicke, editor of the *Historische Zeitschrift* under the title *Weltbürgertum und Nationalstaat* (Leipzig: Teubner). The work is divided into two parts. Part first, entitled *Nation, Staat und Weltbürgertum*, is mainly a history of the development of the idea of the national state, through the works of Humboldt, Schlegel, Fichte, Stein, Hegel, Niebuhr, von Haller, William IV, von Ranke, Bismarck, and other leaders of thought. Part second is entitled *Preussische national Staat und der deutsche national Staat.*

A study of the system of proportional representation as recently introduced into Finland has been published by George Wendt under the title *Die Proportionalwahl zur finnischen Volksvertretung.*

Professor Joseph Kohler of Berlin is the author of a small book, entitled *Moderne Rechtsprobleme aus Natur und Geisteswelt* (Teubner, Leipzig), in which he considers: (1) the problem of the philosophy of law, (2) the problems of criminal law, (3) the problems of criminal procedure, (4) the problems of the law of association, (5) the problems of civil procedure, and (6) the problems of international law.

Students of European municipal government will be interested in Carl Lamp's *Das Problem der städtischen Selbstverwaltung nach österreichischen und preussischen Recht* (Leipzig: Duncker and Humblot), a critical comparative study of Austrian and Prussian municipal law, a criticism of the theory of municipal home rule, and a discussion of the problems and conditions of self-government for cities.

A popular discussion of some problems of world politics with particular reference to the effect of the Anglo-Japanese alliance upon the future

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of the Orient is contained in a book entitled *Nach den englisch-japanischen Bündniss* by Dr. Hans Plehn (Berlin: Karl Curtius, 1907), written during a three years' residence of the author in London. After considering the origin and development of world politics he proceeds with a discussion of the situation in the Orient which led to the treaty of 1902 and the probable results of the alliance. Part third of the volume is concerned with Korea, Manchuria, Japan and her neighbors, and the problem of the Pacific.

Johann von Bloch's *The Future of War in its Technical, Economic, and Political Aspects* has been translated from the Russian into German and published by Puttkammer and Mühlbrecht in six volumes. The titles of the several volumes are: (1) *Description of the Mechanism of War,* (2) *War on Land,* (3) *War on Sea,* (4) *The Economic Shocks and Material Losses of Future Wars,* (5) *The Movement for the Abolition of War,* (6) *The Mechanism of War and Its Workings.* No work of our generation has exerted a greater influence in awakening public sentiment to a correct realization of the burden of war, and its publication in the German language will have the effect of popularizing still more the peace movement of which Bloch has been one of the most conspicuous advocates.

Die moderne Friedensbewegung (Leipzig: Teubner, 1907) by A. H. Fried is, as the title indicates, a history of the peace movement beginning with the founding of a peace society in Berlin on January 13, 1874, by Dr. Edward Lowenthal and coming down to the assembling of the second Hague conference of 1907. The author reviews the history of the Interparliamentary Union, the work of the first Hague conference, and various national and international peace societies of at least one of which he has been an active promoter.

Students of administrative law will be interested in the work of George Bartels, entitled *Das Verfahren vor den Verwaltungsgerichten* (Berlin: Heymann, 1907), being a treatise on the jurisdiction and procedure of the German administrative courts.

A new contribution to the literature of German colonial administration is P. Rohrbach's *Wie machen wir unsere Kolonien rentable* (Halle: Gebauer-Schwetschke, 1907). It is described by the author, an imperial commissary in the colonial service in southwest Africa, as constituting the outlines of an economic program for Germany's colonial possessions in Africa. Especially noteworthy are Herr Rohrbach's observations

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on the organization of the administration and the selection and training of officers for the colonial service.

The current number of the *Historische Zeitschrift* contains a comparative study by Otto Hintze of the origin and development of modern ministers of state in the more important countries of the world. The study reveals a remarkable similarity of development in spite of unimportant variations. The author discusses some of the more important tendencies as they relate to the organization and function of ministries.

A new contribution to the literature dealing with nationality and language questions in Austria is Otto Bauer's *Die Nationalitätenfrage und die Sozialdemokratie* (Wien: Brand, 1907). The author is a social democrat and sees in the fuller democratization of the empire the ultimate solution of the various questions considered. As contributing to this end he suggests a restricted autonomy for the several nationalities on the "basis of a combination of the territorial and personal principles."

A study of the socialistic activities of the circle governments in Prussia is Heinrich Sohnrey's *Aus der sozialen Tätigkeit der preussischen Kreisverwaltungen* (Berlin: Deutsche Landbuchhandlung, 1907). The study is the outcome of an investigation undertaken by the *Deutsche Verein für landliche Wohlfart und Heimatphlege* with the approval and coöperation of the minister of the interior and is based on the return of 472 administrative reports. It reviews the activities of the local governments in the interest of education and culture, promotion of the public health, establishment of libraries, regulation of labor, draining of marshes, encouragement of agriculture, construction of canals, establishment of better facilities for traffic and intercourse, etc.

Das Kriegsrecht zu Lande in seiner neuesten Gestaltung by Albert Zorn (Berlin: Heymann) is a treatise on the law of war on land as the law was modified by the conventions and deliberations of the first Hague conference.

An admirable contribution to the study of an important question of international law is *Die völkerrechtliche Clausula rebus sic stantibus* (226 pages) by the late Prof. Bruno Schmidt of Heidelberg, being number one of the sixth volume of the well known series edited by Profs. Jellinek and Anschütz under the title *Staats und völkerrechtliche Abhandlungen* (Leipzig: Duncker und Humbolt, 1907). As the title indicates this is a study of the rule that a treaty is modified or abrogated by a change of circumstances which was the basis of the treaty and one of its

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tacit conditions. Jellinek in his *Die rechtliche Natur der Staatsverträge* had examined already into this subject in a general way and the Austrian publicist Pfaff had considered the part played by the doctrine in Austria, in a monograph entitled *Die Klause rebus sic stantibus in der Doktrin und der österreichischen Gesetzgebung* (1898) but it has been left to Professor Schmidt to treat the question fully both in its theoretical and historical aspects. He shows by citation from the great body of authorities from Grotius to Pradier-Fodéré that treaty obligations have always been understood to be entered into subject to the doctrine *rebus sic stantibus* and he demonstrates from a historical review that in practice the doctrine has played an important part in European and American diplomacy. Herr Schmidt points out the danger of treating the rule as a specific legal principle, which in reality it is not, calls attention to the difficulty of determining what are the "changed circumstances" (veränderten Umstände) that justify the abrogation or modification of a treaty and attempts to define in a general way the sphere in which the rule is properly applicable. The study is one of the best of the sixteen that have appeared in this excellent series of monographs in political science and international law.

Der Streit um das Seebeuterecht by Wolfgang Hamman (Berlin: Puttkammer und Mühlbrecht, 1907) is a timely monograph in three parts dealing with the international law of capture on the sea. In part first the author reviews historically the controversy over the proposal to exempt private property on the sea from capture, beginning with Franklin's treaty with Prussia in 1785 and coming down to the assembling of the second Hague conference in 1907. Part two compares the rules governing capture on land with those relating to capture on the sea and analyzes the reasons for the differences of practice regulating the two kinds of capture. Part three deals with the military and political considerations which in the opinion of the author seem to justify the continuance of the sea rule.

Die ererbten Anlagen und die Bemessung ihres Wertes für das politischen Leben by Prof. Dr. Walter Haecker is the title of the ninth volume of the *Natur und Staat* series edited by Professors Zeigler, Conrad and Haeckel (Jena: Gustav Fischer). It is a study of the part played in political life by inherited tendencies, an attempt to formulate the principles of heredity so far as they affect the political development of States and the course of legislation. The author starts out with a discussion of race theories, then proceeds with a study of social characteristics, and ends with a consideration of "diagnosis" (Part III), and "technique" (Part IV).

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German doctoral dissertations and brochures of interest to students of political science are; *Das landesherrliche Begnadigungsrecht in Deutschland*, by E. Adolph (Jena); *Recht und Sitte auf den primitiven Kulterstufen*, by R. Hildebrand (Jena: Fischer); *Das Seerecht von Oléron nach der Handschrift Paris*, by H. L. Zeller (Mainz: Diemer); *Das burgerliche Gesetzbuch unter Berücksichtigung der gesammten Rechtssprechung der oberen Gerichte des deutschen Reichs*, by E. Neukirch, A. Rosemeyer and H. Telgmann (Halle: Waisenhaus); *Entwicklung und Ziele des Kolonialrechts* by H. Naendrup (Munster: Cappenrath); *Das römishe Recht in den germanischen Volksstaaten*, by A. Halben (Breslau: Marcus); *Moderne Staats Verträge über das international Konkursrecht*, by F. Meili (Zurich: Fussli); and *Die altgermanische Hunderschaft*, by C. von Schwerin.

A CORRECTION

EDITOR, POLITICAL SCIENCE REVIEW,

Dear Sir—I notice in your quarterly (for November, 1907, p. 124) the review by Mr. E. J. Benton of the "Report of the twenty-second conference of the International Law Association," held at Christiania, September, 1905.

As a member of the association for some years, much interested in its work, I ask leave to correct an error. Mr. Benton mentions the organization of the International Maritime Committee in 1896 and later says "During the early years of its existence the International Law Association met annually and published a report of its proceedings but since the formation of the Maritime Committee the two have adopted the practice of biennial meetings in alternate years."

May I say that the association has not adhered to such a practice. In 1899 it met at Buffalo, U. S. A., August 31 to September 2; in 1900 at Rouen, France, August 21 to 24; in 1901 at Glasgow, Scotland, August 20 to 23; in 1903 at Antwerp, Belgium, September 29 to October 2; in 1905 at Christiania, Norway, September 1 to 4; in 1906 at Berlin, Germany, October 1 to 5; in 1907 at Portland, Maine, U. S. A., from August 29 to 31. It will therefore appear that in the past nine years it has met seven times and its meetings for the past three years have been annual and not biennial. Moreover, the constitution by article vii provides for "an annual conference of the association" (see report, 1906, p. xvi) and for the annual publication of its transactions (see report 1906, p. xvii).

The association, it may be added, expects to hold its annual conference for the coming year, 1908, at Buda-Pest, Hungary. The writer ventures

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to call attention to this meeting thus early because, as chairman of the committee on international law of the American Bar Association, he is most anxious that the conference at Buda-Pest should be well attended by American scholars interested in international law. With that view an effort has been made to have the conference called for some date not later than September 1, so that those of our countrymen who are interested may be able to attend and yet return by the middle of September in time for autumnal professional work in the courts and the universities. The request for an early meeting has been most sympathetically received and it is much hoped that the date can be arranged accordingly.

Very truly yours,

CHARLES NOBLE GREGORY.

State University of Iowa,
November 30, 1907.

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BOOK REVIEWS

The Truce in the Far East and its Aftermath. By B. L. PUTNAM WEALE. (New York: The Macmillan Company. 1907. Pp. 647. Map of the Far East.)

Signs and Portents in the Far East. By EVERARD COTES. (London: Methuen. 1907. Pp. 308.)

The former imperial customs official who writes under the pen-name B. L. Putnam Weale, has added another large volume to his valuable studies on contemporary affairs in the Far East. His official experience, connections, and personal knowledge give him a positon of great advantage as an observer of political action; he adds to these keen insight into complex movements and into political motives, the power of analysis, and a luminous, attractive style. These qualities have made him one of the most influential guides of public opinion on oriental matters. The present volume indicates that his former enthusiasm for Japanese political action has somewhat waned, although he has not veered around completely and joined the ranks of the men who see in every Japanese move the signs of a deep laid and sinister scheme of conquest. His main position, as indicated by the title of this book, is that the present situation in the Far East is merely a ten years' truce bounded by the duration of the Anglo-Japanese treaty. If, during this short period, China can develop her economic and political life so as to become capable of self-defense and of a sane national policy, it may be possible to secure a permanent Far Eastern peace, as distinguished from a Japanese, Russian, or European peace imposed upon the Far East after another destructive war.

The author devotes the first part of his work to a cursory review of the character of Japanese government and to a more detailed study of Japanese action upon the Asiatic mainland. He points out that authority is the central principle of the Japanese system, and that the representatives in Parliament do not exercise an efficient control over public policies. Social efficiency, under the control of the government, culminating in the highly organized machine of the army, is the aim secured through a great extension of governmental powers. The expenditure

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of the government has increased fourfold in twelve years. To meet these financial demands, the government is instituting a monopolistic system in economic activities. A tobacco, salt, and camphor monopoly has already been established; the State has recently acquired the railways, and through subsidies it exercises a controlling influence over the merchant marine. The prominent banks coöperate with the department of finance to such an extent as to place all important financial operations within the sphere of governmental influence.

The author next turns to the situation in Corea. He points out the basis for misunderstanding in the hereditary hatred felt by the Coreans for the Japanese, and in the lawless and predatory character of the low-class elements that have invaded Corea from Japan. The Japanese government has not succeeded in creating a favorable impression among the Corean people. The problem which it confronted in 1904, was to establish its influence in Corea and to guide that unfortunate country toward a better economic and social condition, without unduly wounding Corean susceptibilities. It is plain that in this the Japanese have not succeeded. They had before them the examples of such men as Sir Andrew Clarke in the Malay States, Lieutenant-General Meade in India, and Lord Cromer in Egypt, but they did not meet the situation which confronted them with a similar success. Though their problem may have offered greater difficulties, the Japanese are held responsible for not having avoided the use of crass methods. The author criticises them for continuing military control long after it has become unnecessary, and he sees in the coldness and secretiveness of their nature, in a certain social unadaptiveness, one of the causes of their failure. He looks upon the supercession of the foreign custom service under Mr. McLeavy Brown as a distinct injury to British interests. In the last chapter of Part I, the author gives a masterly outline of the general Japanese position in South Manchuria and Corea.

The chapters of Part II give an adequate idea of the great popular forces that have been set in motion in China, and help us to appreciate the deep significance of the crisis. Events move rapidly even in China, and the details of the political situation have already been modified in important respects since this book has been written; thus the power of Viceroy Yuan for a time suffered a serious eclipse. Tieh-liang no longer stands for the Viceroy's program; indeed, it was mainly through him that H. E. Yuan's military position was undermined. To the difficulties by which Yuan's program is confronted, there must now be added direct personal attacks made upon him through memorials, denun-

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ciations, and edicts, and the see-saw of court favor and intrigue at Peking which has injured some of his ablest supporters. The professional agitators of whom the author speaks are probably Chinese students returned from Japan, rather than Japanese. The national field maneuvers are not to be held annually, as the author states, but at intervals of three years. Annual maneuvers are to take place in the provinces. The statement that by 1908 China will have a first class army of 200,000 men, perhaps needs modification, in confining the term "first class" to parts only of the army; the quality of this organization differs very greatly from province to province.

The author has great confidence in the character and innate force of the Chinese people, but he keenly realizes the dangers by which the national movement is beset and the critical difficulties threatened by the mutual suspicions between the court, the officials and the people; the reformers and the reactionaries; the natives and the foreigners; the Confucionists and the missionaries. It is his final conclusion that "unless the coming decade prove the most remarkable in modern Chinese history in the matter of sound reform, it will certainly be the prelude to complications which will result in immense warfare."

The somewhat mysterious title chosen by Mr. Cotes raises expectations which his book fails to satisfy. It is indeed nothing more than a well written and interesting account of the trip of an Anglo-Indian journalist along the main routes of communication from Canton to Shanghai and Hankow, and thence to Peking, Manchuria and Corea. Were it not for the title, it would not be fair to institute a comparison between this book and the volume reviewed above. But while it is the work of a thinking man and far more serious than the ordinary traveler's chat, it does not after all materially help us to understand the "signs and portents" of the Far East, nor even to know what they are. The scenes and events described are already familiar; no new light is shed, and we miss the keen analysis of the larger movements. But looked upon merely as a book of travel, giving the impressions of a publicist, the book is very successful indeed and enlists interest and sympathy. His account of the manner in which governmental power in China is circumscribed by the right of popular resistance, and his description of the new industrial establishment in Chinese cities are very informing. But the mental attitude of the Anglo-Indian becomes apparent when he speaks of the Anglo-Japanese-American policy toward China and expresses his conviction that "Europeans at present alone possess the qualifications required for the government of the country." It would per-

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haps be difficult to establish by satisfactory evidence the statement that the taxes levied by Chinese officials are at least as heavy per capita as those raised in India; and when we consider the manner in which her national debt was imposed upon China, it is perhaps unfair to charge it up against her that she has practically no reproductive works to lighten the burden of the interest payments. Mr. Cotes' judgment of the resources of Corea is more favorable than that expressed by Putnam-Weale, and he is very agreeably impressed with the Corean people. He also adds his testimony to the ill success which has attended the establishment of Japanese authority in Corea. But while the Japanese have made an unfortunate start, they are at least to be credited with some substantial reforms. They have not, however, in the author's view, faithfully lived up to the spirit of their obligations towards the merchants and industrials of other nations. In a chapter on India as a Lever in the Far East the author points out the advantages which Great Britain might derive from a close coöperation between the British and the Indian foreign offices in Far Eastern affairs.

PAUL S. REINSCH.

Practice of Diplomacy. By JOHN W. FOSTER. (Boston: Houghton, Mifflin and Company. 1906. Pp. 401.)

This volume constitutes the third larger contribution of Mr. Foster to the literature of diplomacy. It is perhaps not too much to say that in no language does there exist a more attractive work on matters which are usually dealt with in compendia or manuals of practice. The author distinctly disavows the purpose of adding to such technical writings in this work, which rather aims at giving a popular portrayal of the methods of diplomatic intercourse, and the various activities and trials of diplomatic life. With admirable clarity of style he presents the main facts of diplomatic practice, abundantly illustrating each principle, method, and requirements by instances of actual experience, frequently taken from his own experience. But the book is by no means to be classed with ordinary collections of diplomatic anecdotes. Diplomatic traditions are not uncritically accepted, but strict methods of historical investigation are employed. The anecdotes are moreover entirely ancillary, subordinate to the main current of thought. The study of the original material is everywhere apparent, and in many places controversial points are cleared up in a discriminating manner. The book

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thus becomes a valuable and delightful companion volume to the study of the more serious problems of diplomatic history and international law.

The author dwells on the utility of the diplomatic service, and in agreement with Lord Palmerston holds that, far from being rendered unnecessary by the improvements in communication and the growing prominence of economic relations, diplomatic representation, the personal contact of intercourse between nations, has been given new and more important functions. He approves to a certain extent of the American system of selecting prominent men, not trained as diplomats, for foreign posts, especially for the more difficult ones. In his opinion, there ought to be a regular diplomatic career, entered by examination for the secretaryships; but the government should also from time to time vivify the service by drawing into it representative citizens from other walks of life. The creation of ambassadorships is not looked upon with favor. It would have been a more dignified policy for our government to take the lead in the abolition of all diplomatic ranks. No substantial benefits are obtained from maintaining various grades in the service, while endless friction and unnecessary embarassments are the inevitable result.

The procedure in the appointment and reception of diplomats is set forth, as well as the right of governments to object to the accrediting of a *persona non grata*. The duties of diplomats to their own government, as well as to that which they are accredited, are illuminated by apt illustrations. The relation of the diplomatic service to the navy and its officers, an interesting subject, is however only slightly touched upon. The author pronounces in favor of the use of the singular verb with the noun "United States," a practice which is now (since 1900) uniformly followed by the department of state. The publication of an annual volume giving the principal state papers on current foreign affairs, is held preferable to the European practice of issuing from time to time a collection of documents on some special topic. In this connection the author also points out that the traditional privilege of ambassadors to deal directly with the head of the state, has little practical importance at present, as public affairs are not transacted through oral statements, but by formal negotiations with the foreign office. The duty of diplomatic representatives to confine their remarks upon public occasions to matters to which no political significance attaches, is illustrated by many striking instances. This makes it possible for the layman to understand how mediocrity of talents, if associated with absolutely correct breeding, may be a positive help in diplomatic life.

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The author takes up also the multifarious duties of consular officers. He emphasizes the dangers to which the service has been exposed from the practice of making purely political appointments. It is his opinion that while the president through executive orders might reform the system requiring competitive examinations for entrance, and basing advancement upon efficient service, a permanent improvement in the service can be effected only by law. Recent executive orders have indeed been directed toward the above purpose, but the principle of competitive examinations has not yet been introduced. The author does not discuss the relations between consuls and diplomats. The lack of coöperation and the friction engendered by social jealousy have indeed been a serious detriment to our foreign service. It is almost a truism that the two branches of the service ought to coöperate; and it is difficult to understand why it is just in the service of the United States that the most invidious social distinctions have maintained themselves.

The discussion of the making and termination of treaties is valuable, and new light is shed upon the difficult problem of compacts made by mere executive agreement. The author points out that it has never been attempted to bind the United States to the payment of damages by such means, and that their use has in fact been frequently ratified by subsequent, or authorized by previous, treaties.

PAUL S. REINSCH.

The International Law and Diplomacy of the Russo-Japanese War. By AMOS S. HERSHEY, Ph.D., professor of political science and international law in Indiana University. (New York: The Macmillan Company; London: Macmillan and Company, Ltd. 1906. Pp. xii + 394.)

This volume deals largely with the new and unsettled questions raised during the Russo-Japanese War, the first conflict of long duration fought under modern conditions of naval warfare. It begins with an introductory chapter on the Causes of the War and closes with a chapter on the Treaty of Portsmouth; the twelve intervening chapters deal with questions relating to the use of wireless telegraphy and submarine mines, contraband, the seizure of neutral merchantmen, the alleged right of sinking neutral prizes, the voyage of the Baltic squadron, the status of Korea and China, the efforts of the United States to preserve Chinese neutrality, the Russian and Japanese rules of warfare,

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and the relations of the belligerents with each other. The topic which claims most attention is the rights and duties of neutrals, a division of international law demanding thorough revision and enlargement as is shown by the amount of space given it on the program of the second Hague peace conference.

Dr. Hershey's book is not the first work dealing with the problems presented by the war between Russia and Japan: Lawrence's *War and Neutrality in the Far East*, which appeared soon after the war began, though an able discussion of the general principles involved and of the earlier incidents of the conflict, was of necessity a forecast rather than a discussion of facts; Smith and Sibley's *International Law as Interpreted During the Russo-Japanese War*, on the other hand, while attempting to treat all the questions at issue, was put together too hastily and published too soon after the war to be very satisfactory, based, as it was, on press dispatches and other undigested material. Although much of Dr. Hershey's material is likewise drawn from newspapers, such as the London *Times*, the New York *Times*, the Washington *Post*, and the Chicago *Tribune*, he has had access to published documents and the great majority of his quotations are drawn from official sources. His book is consequently of more permanent value and more authoritative.

The author is a champion of legality and an earnest advocate of international arbitration; his views are liberal, progressive, and thoroughly American; they would be considered idealistic by some of the European publicists. His treatment is in the main fair and impartial. Germany and France come in for a share of criticism; the former for failure to prevent the sale to Russia of vessels belonging to the auxiliary navy, and the latter for assistance rendered the Baltic fleet. As to the conduct of the two belligerents, about which there was so much ill-considered criticism, the following conclusion is reached: "While there were a considerable number of alleged violations of the rules of civilized warfare, especially on the part of Russia, these rules were on the whole fairly well observed by both belligerents. The violations, even when proven, were wholly exceptional and were comparatively few in number and of minor importance considering the duration of the war and the magnitude and vigor of military operations. In this respect this war ranks perhaps as high as any in history with the possible exception of the Spanish-American War."

The style is direct and remarkably free from obscurity. Footnotes and references occupy a large amount of space. Of the latter some are not as specific as they might be, such as "*House Doc.* of the 58th Con-

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gress, 3d session (For. Rel.)," which occurs frequently. The volume is the result of indefatigable labor in the collection and verification of facts, and while many of the conclusions are necessarily tentative, as far as they go they appear to be sound.

JOHN HOLLADAY LATANÉ.

De La Situation Légale des Sujets Ottomans Non-Musulmans. By COUNT F. VAN DEN STEEN DE JEHAY. (Brussels: Oscar Schepens & Co. 1906. Pp. 555.)

The present population of the Ottoman empire, excluding vassal states, like Egypt, under the administration of a foreign power, may be placed at 24,000,000. About one-quarter are not members of the Islamitic faith at all, yet notwithstanding the strictly religious basis of the Moslem state, enjoy certain privileges conceded either by reason of the fact that their religion is "recognized" by the sovereign, or by reason of their occupancy of a territory administered under a special form of government.

It thus occurs that peoples of many races, of different religions and presenting a heterogeneous social scheme have been united by the course of historic events under one government. Though in close contact with the Mussulman subjects of the empire in their everyday life, the régime under which they live is separate and distinct not only in respect of their religious rights and obligations but also in respect of their political, social and civil legal status.

The reason for this is not far to seek, for, as is well-known, Mahomet II, after the conquest of Constantinople, did not attempt to apply the law Mussulman to his conquered subjects. To the faithful, the Koran was not only supreme in matters of religion, but was also supposed to cover the whole field of *civil* rights and obligations. It applied *only* to the faithful and all others were excluded from its operation. At first this resulted in the formation of only two groups within the empire, viz: believers and infidels. The sultans, however, led by the force of events, gradually came to recognize the differences of faith, religious rites, and civil status existing among the non-Mussulman class of the population and with a tolerance to which the present author pays adequate tribute, have established many communities or *mil'lets*, each with its own civil laws and its own governing body and having a patriarchal minister to act as its representative in its official relations with the Sublime Porte.

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The system thus existing reminds us very much of the conditions in western Europe during the early middle ages under the régime of race law as represented in the *leges barbarorum.* The statement made at that period by Bishop Agobard of Lyons in a letter to Louis the Pious might well apply to the Ottoman empire of today, viz: "It often occurs that five men walking or sitting together are not two of them governed by the same system of laws."

From the modern standpoint these conditions are anomalous, at least as applied to *native* subjects, although those familiar with the doctrines of the conflict of laws prevailing in continental Europe of today will recognize a certain similarity in respect of the status of *aliens.*

There is no Ottoman code or statute which precisely defines the régime of any of the communities. Much of the law is contained in documents in the nature of conventions and much is contained in local custom or immemorial practice. The author has, therefore, performed a valuable mission in having collected from widely scattered sources, oftentimes difficult of access, detailed information as to the particular system operative for each of the non-Mussulman communities and as to the guaranties existing for the maintenance of their independence as entities recognized by the Sublime Porte.

In the first part of this work, the author deals with the religious privileges accorded to each separate group of non-Mussulman Ottoman subjects and the civil legal rights which result therefrom. This is by far the larger and more interesting portion. Here we find the status (1) of the various Christian cults not of the Roman faith; (2) of the cults under the Roman control; and (3) of the cults neither Christian nor Mussulman. The differentiation of the cults is explained and the historical causes are accounted for. Considerable reference to ecclesiastical literature is given, as for example in recounting the shades of belief separating the Nestorians (p. 26) from the Monophysites (p. 34) and these again from the ex-Monophysites (p. 238). The interest to us of all of this is that each religious tenet has its counterpart in the law of the *mil'let,* especially in respect of persons and domestic relations. The Moslem state thus carefully protects the liberty of conscience of its non-Mussulman subjects as a basis of maintaining a greater sanctity for the established religion of the state.

The non-Mussulman, or *raïa,* no matter of which cult, is disqualified from military service. The *mil'lets* are each subject to a collective tax, or *kharadj,* as a substitute. The same exemptions against the collection of the tax, however, are granted to non-Mussulmen as to the faithful.

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Thus all Christians born within the confines of the capital city are free from this impost (p. 11).

The "orthodox" community of the Greek faith is described in great detail. It consists of fifteen autocephalic bodies, each of which dates its local powers to some historic event in the life of the church (p. 81). The most ancient of all is that of Antioch which the author refers back to the year 53 A.D.; the most recent, that of the Bulgarian church, founded in 1870, with an exarch resident at Constantinople.

The Protestant cult dates its existence as an entity, from 1832. The author ascribes the existence of Protestant Ottoman subjects to the activities of English and American missionaries especially in the provinces of Asia Minor. The cult has an "agent" representing it to the Sublime Porte and, strange to say, all Protestants officially constitute but *one* sect although in fact composed of Presbyterians, Baptists, Episcopalians and Methodists (p. 222).

The privileges enjoyed by subjects of the Roman faith are treated in a separate book (Book II, pp. 227–336). The great majority, though acknowledging subordination to Rome, do not follow exclusively the rites of the Roman Catholic Church. As a corollary, therefore, we observe that the system of domestic relations of many of the sects does not coincide with that of any Catholic western country. This refers particularly to the Armenians (p. 244) and the Maronites (p. 296). Thus the law of the latter permits the marriage of secular priests.

The Israelites of the Ottoman empire still number nearly 400,000. They enjoy a great measure of autonomy in matters civil and religious and are governed practically by the Mosaic law as laid down in the Old Testament and the ancient law books (p. 347).

The second part of the book is devoted to privileges accorded to Ottoman subjects by reason of their domicil within a particular territory. The Albanian tribes, for example, have long enjoyed a certain administrative independence which has been confirmed to them largely through the intercessions of Austro-Hungary (p. 408).

The third part of the work deals with the status of Ottoman subjects, for the most part, though not all of them Christians, who are under the protection of the consular officers of various western nations. This subject does not come entirely within the limitations of the title and might well have been omitted altogether as the position of these "*protégés*" could have been more clearly defined in a treatment of the rights of the protected class as a whole, that is, alien as well as natives. In fact the legal status of the Ottoman *protégé* is not the result of dispositions

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of Ottoman municipal law at all but of international law applicable to the Ottoman empire by reason of the capitulations.

Prior to 1863, "interpreters" to the consuls of the various nations were assimilated in matters of private law to the resident natives of the country whose consul employed them. This privilege was considered permanent, yea even hereditary. A perusal of this part of the book (pp. 501–515) will show with what facility a term such as this can be stretched to its utmost limits, especially when the power against which the privilege operates be a weak one. There seem to have been as many interpreters attached to each of the consulates as there were wives in the sultan's harem. Fortunately this privilege has since been strictly limited to the period during which the *protégé* is actually discharging his functions, but those who date their commissions or *bérat* prior to 1863 are still recognized as *protégés* under vested right.

Count van den Steen de Jehay has written upon a difficult subject in a manner reflecting much credit upon himself and the Belgian nation whom he so long represented as minister in Constantinople. Written particularly for young diplomats, it will serve to enlighten all those who are interested in the intricate mysteries of the constitution of the Ottoman state.

ARTHUR K. KUHN.

Traité de Droit International Public, Deuxième Partie. By A. MÉRIGNHAC. (Paris: Librarie Générale de Droit et de Jurisprudence. 1907. Pp. 801.)

Professor Mérignhac takes up, in this volume, the second of the three general heads under which he discusses his subject. His first volume, published in 1905, and noticed in the February number of this REVIEW in 1907, was of an introductory character. In this, he takes up public international law in time of peace, in a third he proposes to consider how it deals with the conditions of war.

It is more and more shaping itself, he insists, in accord with the principles underlying the public law governing the internal concerns of each particular state. This is subordinate to some fundamental traditions or rules, of a constitutional character, and attended by an administrative law, enforced by certain representatives of the government. So, he maintains, the great principles of public international law serve as a constitution for the world; while their application in detail has been long determined by a body of administrative rules, and is fast coming

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to be enforced by administrative officials holding a commission from civilized humanity (pp. 1–3). This forecast can hardly be deemed fanciful in view of the number of international bureaus already in active existence for the regulation of international relations. In a list of the leading ones, the author states, with some detail, the basis of organization of the latest of them—The International Institute of Agriculture, created by the convention of Rome in 1905. Forty-one powers were officially represented in the "conference of agriculture" by which this convention was framed. Its objects are to promote the agricultural interests of all countries, by the prompt exchange of information, as to the crops of the season, market prices, wages of laborers, scientific methods of cultivation and management, diseases affecting trees and plants and their remedies, and in general as to whatever may tend to agricultural prosperity and advancement. The King of Italy, who was the main promoter of the conference, has endowed the institute with a net revenue of 300,000 francs, accruing from certain lands in Tuscany. Each nation representing it also makes annually a proportionate contribution to the treasury. The seat of the institute is at Rome, and its affairs are regulated by a permanent committee, subject to a general assembly of delegates from each of the states, which is to meet periodically (pp. 161, 695, 711).

The author's treatment of these different manifestations of the upspringing of an international administrative law constitutes the most valuable portion of the volume. On this he has something new to say, and says it with effect. It is a phase of universal progress which belongs distinctly to our own times, and holds the best possible guaranty of perpetuity in the fact that it rests on mutual aspirations for the common good of mankind; though no doubt proceeding from the conviction that by promoting that in the lines so followed, the good of each of the participating nations will be best secured.

Considerable space is given to a consideration of the various forms of political union between different states, and their consequences in international relations. The ancient type of union—the confederation—has fallen into desuetude, M. Mérignhac points out, since and because of the organization of the United States under their present Constitution (p. 27), with a federal power, governing exclusively in all matters of foreign relations.

Attention is called to the anomalous position of the greater colonial possessions of Great Britain, under which they can treat with foreign powers on an equal footing in respect to many matters of international

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importance (p. 157), thus sweeping what would seem properly to belong only to the crown into the range of what the author names (p. 1) "*l'activité étatique*" of the province.

M. Mérignhac is one of those who deny to the individual man any place in the field of public international law, and apparently would also exclude him from any personal connection with the administration of private international law (pp. 170–172). The same rule he applies to every church (p. 174).

In referring to our protectorate over Cuba, the author makes the pardonable mistake of describing Judge Taft as our secretary of state (p. 221). No secretary of war before his day ever had occasion to assume or ever did assume so many diplomatic functions.

An interesting chapter is devoted to the dominion of the air (p. 398). M. Mérignhac favors the application in time of peace, so far as possible, to balloons and air ships, of the settled rules governing the high seas. A public air ship should have the immunity belonging to a seagoing man-of-war. A private air ship should be exempt from the jurisdiction, civil or criminal, of the countries over which it sails, provided it conforms to their laws of police, so far as these may affect its course (p. 409).

SIMEON E. BALDWIN.

Internal Taxation in the Philippines. By JOHN S. HORD. Johns Hopkins University Studies in History and Political Science, Series XXV, no. 1. (Baltimore: Johns Hopkins University Press, 1907. Pp. 45.)

This is an exposition and defense of the new system of internal taxation adopted in the Philippine Islands in 1904. Since the author was also the principal author of the law which aroused such a storm of protest at Manila in 1904, and since he has, as internal revenue collector for the Philippines, been in charge of the administration of that law, one turns to this study with expectations of finding in it a more thorough piece of work than the author evidently set for himself to do.

The first part, a summary of internal taxation in the Philippines during Spanish rule, is quite frequently inaccurate, owing to insufficient study of the previous régime, as the unsatisfactory bibliographical sources would themselves indicate. The chief fault here lies in the failure to reveal the changes wrought in Spain's fiscal system in the Philippines after 1878, so that there is not given to the reader a fair basis for the

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comparison of the new system of taxation with that prevailing during the closing years of Spanish rule.

The exposition of the content of the new law and of its administration is clear and concise. But altogether too much space is devoted, not to the law itself, but to the effort to draw a parallel between Porto Rico and the Philippines and to arguments for the reduction or abolition of customs duties on Philippine products entering the ports of the United States. How far astray the author is led by this eagerness to argue a cause is shown by such extreme statements as this (p. 12): "But without foreign markets in which to sell some of their principal products, the import trade of the Islands would soon become as insignificant as their export trade had already become, and customs duties, the last resource for support of the insular government, would also disappear." Also, just above: "* * * the deplorable fact that the Philippine Islands had lost their old markets for their surplus products and had been given no new market * * *." Whether or no it is desirable to bind the Philippines to the United States by artificial trade regulations—and the reviewer believes the history of the Philippines under Spain plainly shows the folly of such an attempt—the advocates before congress of such a course will not strengthen their case by overstating the facts. These are, that Philippine export as well as import trade has already very greatly increased under American rule; that the decline in certain of the old staple exports has been due to conditions attendant upon warfare, and even more to the fact that Philippine agriculturists have fallen farther behind the world than ever before in methods of cultivation and preparation of their crops; and that, barring the loss (important, but not vital) of a free market for tobacco in Spain, their disadvantages in the world's markets are the penalties of their own sloth and ignorance, not the result of the establishment of American sovereignty over them.

In fact the author is not quite happy in his presentation of the case for establishing the same fiscal relations between the Philippines and the mainland as between Porto Rico and the mainland. Moreover, one questions the pertinence of the argument, even though historically the Philippine internal-revenue law was adopted in prevision of action by congress removing the customs duties between the islands and mainland. One expects of such a paper a treatment of the subject on broad grounds of economic policy rather than a contemporary political brief. Similarly, the foolish and rabid attacks made on the Hord law, in 1904 and 1905, by interested Spanish and Filipino critics in Manila might have

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been dismissed very briefly; but we are disappointed by the failure to discuss the new system of taxation on broader grounds than those touched in that debate, and to meet the really important criticism to be made upon it, viz: its inquisitorial methods, its complicated machinery of administration, its duplication of imposts on mercantile transactions (in respect of certain products), and other un-American features.

JAMES A. LEROY.

The Empire and the Century. A Series of Essays on Imperial Problems and Possibilities by Various Writers. (New York: E. P. Dutton & Co. 1905. Pp. xxiii+895.)

The purpose of this book is stated to be "to give an authoritative account of the empire, as it appeared to contemporaries at this particular moment of its history. It grew out of the idea of publishing an "imperial supplement" to the London *Outlook* in connection with the centenary of Trafalgar, and speedily outgrew that idea into this bulky volume. The stimulus to British imperialism given by the circumstances connected with the Boer war may be seen to be still affecting in 1905 nearly all the fifty contributors to this symposium. Chamberlain's proposals for an imperial fiscal system, too, were then arousing the hopes of those who dream of a really united empire. Though propagandism is expressly disavowed in this work, one notes a preponderance of voices for the Chamberlain plan among these imperialists of the ardent sort, while Editor Garvin of *The Outlook* presents at length a specially prepared argument for trade preferences within the empire, and the case for free trade is but tersely put by Editor Strachey of *The Spectator*.

The "divine mission" idea appears quite frequently, of course, and we find that same Providence, that we "provincial Americans" are fond of claiming for our nation's special protector and guide, performing here the same function for a somewhat less exclusive entity, viz: the "Anglo-Saxon people." It is more to the point, however, to remark how not only the divergences of opinion, but the totally different points of view, revealed by the various contributors to this symposium make it appear that the Chamberlain fiscal program is but one of various obstacles to the realization of the "imperial ideal," attractively presented though it be by some of these essayists. These obstacles are all of a highly practical nature (such as, e. g., the race problem in the empire), and one finds very little indication as to how they are to be removed in such gener-

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alities as these remarks of the editor upon his contributors: "The one link of connection is that all are believers in constructive imperialism * * * They desire to see a self-conscious community rather than a collection of indeterminate atoms. They believe that the doctrine of *laissez-faire*, while it may be valuable as a conscious and reasoned policy, is extremely dangerous and futile as a temperamental attitude." Yet one lays down the symposium of these believers in "constructive imperialism" with the feeling that, in spite of them, the emphasis is upon the forces making for disunion rather than upon those making for union.

American readers will be especially interested in the way in which the "race problem" continually appears, above all in the South African sympathy with our own negro problem. The contribution (pp. 539–556) by Sir Godfrey Lagden, native commissioner for the Transvaal, is especially suggestive in this connection. In his essay on *Imperial Organization*, Richard Jebb uses rather strong words (p. 342) as to our past conduct toward Canada, speaking of our gaining our way with "inexperienced Englishmen" by "bluff and misrepresentation," and saying that we got the Alaska boundary question settled at London by "obvious trickery."

It is interesting to find a military writer, the same Colonel Younghusband who led the expedition to Tibet, suggesting that perhaps India's chief mission is spiritual in character, as a breeding-ground of religion, and that perhaps England's chief service in India is, by providing peace and order, to make possible the full and final realization of that mission. Also, it is worth while to quote from the article on Imperial Defense by L. S. Amery, one of the historians of the Boer war, the suggestive opinion (p. 187) that, while the panaceas of the Indian national congress cannot be adopted, "things cannot remain forever as they are now, if for no other reason, simply because a state governed and administered on the lines of the India of today can not hold its own militarily against states in a higher condition of political development."

JAMES A. LEROY.

The Early Federation Movement of Australia. By CEPHAS DANIEL ALLIN. (Kingston, Ont. 1907. Pp. ix, 431.)

If it be true that the federal state promises to become the dominant type of governmental organization the history of the federal movement in Australia may well deserve study as having culminated in the adoption of what is perhaps the most finished of federal constitutions. For

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not only did those who framed the Australian federal constitution endeavor to profit by the experience of other federal governments like those of the United States, Germany, Switzerland and Canada; but they incorporated in it several indigenous features designed to give expression to the advanced social and economic spirit of the island population. The results of their labors are embodied in a document which very faithfully reflects the political, social and economic ideals of the antipodes at the threshold of the twentieth century.

Of this whole movement, extending from about 1840 to its final consummation in 1901, Mr. Allin's monograph deals with the first two decades only, the narrative closing with the abortive efforts to secure federation of the various colonies in the years 1860–1863. This stage of the federal movement, which is the most complex and involved, the author has studied with unquestionable thoroughness, giving attention alike to the influence of the home authorities on the course of insular politics and to the complicated interplay of local political interests in the colonies themselves. In this part of the monograph the commanding figure of Earl Grey looms large, and it was not the fault of Downing street that Australian federation was left to become a political landmark of the twentieth century. Grey had the federal plan very much at heart and he bent to its realization the whole authority of the colonial office; but it was his misfortune to have attempted too much and to have allowed his vigorous and imperious methods to place him where he was perhaps justly regarded by Australians as a meddler in affairs which concerned themselves alone. His lordship's spirited endeavors to weld together the Australasian colonies, though quite ineffective at the time, were not without serving a useful purpose, for they raised the federal issue to a higher plane and enabled it to take its place as a leading question in the intercolonial politics of the British antipodes. It is the opinion of the author that Grey's plan was premature and that its realization at the time and by virtue of the methods which the colonial office pursued would have been, in all probability, productive of permanent injury to the best political interests of the Australian people.

Mr. Allin's book bears the stamp of untiring industry; its preparation has led him through a wide range of parliamentary papers both British and colonial; and an earnest endeavor has been made to buttress every important statement by an authoritative reference. The study has been carried on with care and, so far as one not possessing a very intimate knowledge of the field may judge, the narrative is accurate and trustworthy. It is perhaps the misfortune of the author to be somewhat too

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ready to hazard his own interpretations of political events and to advance his personal opinions as to the wisdom or folly of both men and movements. Some of these opinions, at any rate, fail to indicate a maturity of judgment at all proportionate to the assurance with which they are set forth. The relatively narrow scope of the field, and the author's industrious attention to it has resulted in the accumulation of a bewildering mass of details concerning petty intercolonial bickerings through which the reader finds no little difficulty in threading his way. The gift of historical perspective, however, and the faculty of winnowing the salient from the subsidiary are qualities which, among research students, are as rare as they are desirable.

The volume contains three short but appropriate appendices, and a helpful index. A bibliography would have been serviceable, particularly in view of the fact that many of the works referred to in the footnotes are nowhere indicated by their unabbreviated titles. In workmanship the book suffers from the handicap of its publication in the press of a provincial newspaper; but with due allowance for this fact the mechanism of the volume is very creditable.

WILLIAM BENNETT MUNRO.

The Seigniorial System in Canada: A Study in French Colonial Policy. By WILLIAM BENNETT MUNRO. (New York: Longmans, Green and Company. 1907. Pp. xiii, 296.)

This book is the result of a painstaking and scholarly study of the institutions of French Canada. The author, especially interested in his theme as a Canadian by birth, selected it for his doctor's thesis at Harvard University and was awarded the Toppan prize in 1900 on his dissertation. "The whole study has since been revised, somewhat rearranged, and considerably enlarged." It is now published as volume thirteen in the Harvard Historical Studies and fully sustains the hitherto uniform excellence of that admirable series.

Although the book is divided into twelve chapters, each of which is rounded into such a complete discussion of a separate theme that it might almost be called an essay, the whole study falls naturally into three parts, the second of which really constitutes the body of the book.

The first part includes chapters one to three, and provides the historical setting of the seigniorial system as found in Canada, the author taking his spring from as far back as the middle of the sixteenth cen-

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tury. Especial attention is properly called to the fact that while a large majority of the habitants were Norman peasants, the *Coutume de Paris* was made the fundamental law of the land and was administered by officials and priests who came mainly from Paris. There can be no doubt that "since the greater part of the colonists were most familiar with the *Coutume de Normandie* (codified in 1583), the introduction of this custom, while it might have involved some difficulties, would undoubtedly have obviated many of the evils which attended the working of the seigniorial system in the colony" (p. 10). The second and third chapters deal with the earlier and later seigniorial grants, the point of division being the year 1666, two years after the Custom of Paris was proclaimed, one year after the coming of Talon and the year in which "the Company of the West Indies relinquished its right of making land grants in the colony." There was constant friction between the intendants on the one hand, who wished the grants to be peopled as rapidly as possible and to protect the *censitaires* so far as the law allowed, and the seigniors on the other, who were trying to monopolize the water frontage and to increase the value of their holdings by extending as far as possible the dues which they might then or in the future demand of the inhabitants. The benevolence of the French despotism is probably nowhere more apparent than in the constant struggle of the royal representatives in Canada to curb the rapacity of the noblesse, who were urged on by the direst poverty in many cases and in all cases burdened rather than supported by their feudal connections.

The body of the book, chapters four to ten, consists of a careful and detailed analysis, with ample illustration, of the interrelation of the parties to the seignioral system. The duties of the seignior to his superiors are treated under six heads: (1) fealty and homage, (2) *aveu et dénombrement* (his duty to furnish statistical information relative to his seigniory), (3) his obligation to people his grant, (4) a mutation fine, (5) military service, and (6) a number of reservations, etc. The seignior was with great difficulty held to his third duty and was on occasion punished with confiscation for delinquency. Chapters five to seven deal with the seignior's relation to his inferiors, all of chapter six being devoted to the banalities, only one of which—that of the mill—we find enforced in Canada to any extent. "Both the French government and its colonial representatives sought to develop the system of banal mills in the interest of the poorer habitants" (p. 125). The banal mill was required of the seignior because it was necessary for the habitant, the banal bake-oven was seldom used because it was more convenient for the baking to be done at home.

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Among the duties owed by the peasant to his lord (grinding at the common mill was a privilege), the corvée was the most burdensome. Frequent contact with the *courier de bois* and the Indian made the farmer impatient of anything savoring of servitude. In a democratic atmosphere corvée service was "hateful, odious, humiliating and a badge of servitude." Nevertheless, this service was rendered as was the duty to leave certain timber and stone undisturbed, to surrender to the seignior one out of every eleven fish, to abstain from the Indian trade and to use the seigniorial ferry. The seigniorial court, however, was not a success. Although between 1627 and 1663 "more than sixty seigniorial grants were made by the company and in almost every instance judicial rights were given to the seigniors" (p. 146), "the attempt of the French crown to establish a system of private justice in New France had failed signally" (p. 158). The main causes assigned for this failure were the expense of the system to the seignior and the possibility of appeal by the habitant.

The third part of the book, two chapters, is devoted to the British administration and final abolition of the seigniorial system.

The value of the volume is greatly enhanced by the addition of a "Bibliographical Appendix" which is in fact a critical essay on the available sources. There is also an "alphabetical list of printed materials" and an index which covers twenty pages. The author has based his study "wholly upon primary materials" and has observed "the recognized canons of sound historical writing by giving definite references, page by page, to the sources from which information has been drawn." He has also added a number of illuminating footnotes, witness the explanation of the *arpent de Paris* (p. 24).

EDGAR DAWSON.

A Treatise of the Laws, Privileges, and Usages of Parliament. By SIR THOMAS ERSKINE MAY, K.C.B., D.C.L. Eleventh edition. Revised from the tenth edition; Books I and II edited by T. Lonsdale Webster, Second Clerk Assistant of the House of Commons. Book III edited by William E. Grey. (London: William Clowes and Sons. Pp. liii, 1001.)

Sir Erskine May's *Parliamentary Practice* is not intended merely for the historical student. Its first purpose is to serve as a practical handbook and guide to the settlement of disputed points as they come up in parliamentary procedure. It is therefore essential that it should be

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kept up to date, and as the tenth edition was published in 1893, there was an unmistakable need for the present volume. Twice since the publication of Sir Richard Palgrave and Mr. Bonham Carter's edition of Sir Erskine May's great work in 1893, has parliament revised its standing orders. The first of these changes was made in 1902 by the conservative government under Mr. Balfour, while the second revision was effected by the Campbell-Bannerman government in 1906. This second revision was so recent when Messrs. Webster and Grey completed their task, that few rulings had been made by the speaker under the new orders. For the building up of usages, rulings are perhaps of even more importance than the orders themselves. It was therefore a somewhat delicate and difficult task for the editors to select for presentation in the present edition the old rulings which still seemed to be applicable, and to make clear the actual working of orders so newly in force.

In the present edition the authors have adhered to the old arrangement, and have endeavored to retain as much as possible not only of the substance but also of the form of the volume which has so long been the *vade mecum* of British members of parliament. Book I, which treats of the constituent parts of parliament—the membership of both houses, and, very cursorily the franchise on which members of the house of commons are elected; the powers and jurisdiction of parliament; and the privileges of parliament—has required but few changes. It stands in the eleventh edition almost as Sir Erskine May left it when he issued the ninth edition in 1883, just after the conflict over privilege between the house of commons and Mr. Bradlaugh. The practice and proceedings of parliament so far as regards public business form the subject matter of Book II, which has been revised by Mr. T. Lonsdale Webster; while Book III treats of private bill legislation, and has been edited and brought up to date by Mr. W. E. Grey.

In treating the procedure of parliament, the plan followed is to describe severally the procedure of lords and commons in regard to any matter—for example the administration of oaths on the meeting of a new parliament, or the passage of a bill through its various stages—when there is a difference in procedure; but whenever there is no difference to give one account of the form of proceeding which is understood to be equally applicable to both houses. Treated in this fashion, Mr. Webster's work has been almost exclusively confined to the procedure of the house of commons. The house of lords is a much more conservative body than the house of commons; and the changes in procedure effected by the standing orders of 1902 and 1906, have affected only the lower house.

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In 1844, when Sir Erskine May wrote his book, parliamentary procedure was chiefly a matter of usage. The standing orders, of which there are now about one hundred, numbered only fourteen; and the procedure of the house of commons was substantially the same as that on which the business of the house had been conducted since the reign of Henry VIII. The conversion of the lower house into a democratic and representative assembly has had the effect of greatly complicating its business; while the multiplication and diversification of its spheres of activity have made essential far more stringent limitations on the liberty of individual members. If parliament was to get through the immense mass of business which confronted it at the opening of each session, far stricter rules of procedure were essential than those which governed the proceedings of the unreformed house of commons. This limitation of the freedom of individual members is usually dated from 1881, when Gladstone established the closure by means of his urgency rule of February 3. But even before 1881 the commons had begun the simplification of their procedure, with a view to diminishing the opportunities for delay, and abating to some degree the loquacity of the members.

Parliamentary procedure cannot be wholly governed by the written rule. "The proceedings of parliament," read the opening remarks to Book II, are regulated by ancient usage; by established practice, and by the standing and sessional orders. Ancient usage when not otherwise declared is collected from the journals, from history and early treatises, and from the continued experience of practiced members. Modern practice is often undefined in any written form; it is not recorded in the journals; it is not to be traced in the published debates; nor is it known in any certain manner but by personal experience and by the daily practice of parliament in conducting its various descriptions of business." So far as regards ancient usage, Mr. Webster has, of course, little to add to the work of Sir Erskine May. His task has been to interweave the new standing orders of 1902 and 1906 into the old text at each point where the subject matter is affected. Whole sections of Book II "are, of course untouched by the new rules. Chapter vii for example which is the first chapter of this book, deals with the meeting of a new parliament, the introduction of peers, the taking of oaths in both houses, the election of the speaker, the seating and attendance of members. This chapter has required but slight revision; and except for the interpolation of an account of the adjournment of the house of commons on receiving the news of the death of Gladstone, on May 19,

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1898, Mr. Webster has left this chapter in the form in which it was left by Sir Reginald Palgrave in 1893.

Mr. Webster's real work commences with chapter viii, which deals with the method and order in the transaction of business in parliament. When Sir Erskine May wrote his book, and even when he issued the ninth edition in 1883, there were as yet no rules allotting to the days of the week their own special business, or specifying the hours which the house must sit, or the limit of time beyond which only unopposed business can be taken. All these time limits and specifications which have been established by recent standing orders are fully elucidated by Mr. Webster; as are also the rules of debate and those governing questions and the arrangement of business. Forty pages are devoted to committees; the first twenty to committees of the whole house and standing committees, and the remainder to select committees in both houses, and joint committees of the lords and commons. Then follow such subjects as witnesses, and parliamentary communications between lords and commons, and between the crown and parliament; a general description of public bills and their stages in parliament; with some account of ancient and modern practice in regard to the petitioning of parliament. A long chapter is devoted to the work of parliament in granting supply and in levying taxation; and Mr. Webster's section of the book concludes with a brief account of elections and election petitions, and of the impeachment of members of parliament—the last subject being one which belongs rather to ancient than to modern times.

No part of Sir Erskine May's original treatise has undergone more transformation and expansion than Book III, on private bill legislation; and in the present edition, Mr. Grey has again had to add greatly to the work of Mr. Bonham Carter. Legislation by private bills—that is, by bills for the particular interest or benefit of any person or persons, whether for the interest of an individual, a public company or corporation, or of a parish, city or county—is as old as legislation by public act of parliament; and these bills have always been treated somewhat differently from general legislation. It is sometimes difficult, for example in the case of government bills dealing with crown property, and bills dealing with the whole of London, to distinguish between a public and a private bill; and these great measures are frequently treated as hybrid bills, being introduced as public bills, and after second reading committed to a select committee, which is empowered to hear suitors and counsel for and against the bill. From select committee the hybrid bill goes to committee of the whole house, and passes its remaining

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stages as a public bill. A bill brought in to apply to a particular case, or to remedy a special grievance, may be treated as a public bill if it is so worded as to govern all cases of a similar kind. In this case the procedure governing private bills does not apply.

The ground for special procedure on a private bill is that a bill for the particular benefit of certain persons may be injurious to others, and that therefore the action of parliament in passing private bills partakes of a judicial nature, and opportunity must be given for pleadings for and against the bill in much the same way as would be done in a law court. A further analogy to judicial procedure lies in the requirement of fees from every party promoting or opposing a private bill. The modern tendency to greater activity on the part of municipalities and other local governing bodies has enormously increased the volume of private bill legislation which confronts parliament on the opening of each session, as has also the tendency to the creation of great limited companies, all of whose activities are controlled by parliament. In order to reduce the volume of this legislation within reasonable limits, parliament from time to time passes general acts governing large fields of action which had previously demanded individual bills. Such acts are the tithes commutation act, the joint stock companies act, the settled estates and settled land acts, the municipal corporations acts, and various local government acts for England, Scotland and Ireland. A recent example of the effort of parliament to bring greater order and promptness into private bill legislation is found in the private legislation for Scotland act, which was passed in 1899.

The procedure in regard to private bills is binding not only on members of parliament but also on the persons or corporations introducing the bills, and on all parties opposing them. Rules governing the date and method of presenting the petition for a bill, and the notices to be given to all who may be interested in it, must be strictly complied with; and proof of this compliance presented to the examiners for standing orders—members of the house of commons who are appointed for this purpose. When a private bill has been read a second time—unless it is found to contain clauses of general import, in which case it must go to committee of the whole house, before going to a select committee—it is referred to the committee of selection or, if it is a railway or canal bill, to the general committee on railway and canal bills. The general committee on railway and canal bills is nominated at the commencement of each session, and usually consists of about sixteen members, three being a quorum. If the committee of selection finds that there is no

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opposition to a private bill it is referred to the committee on unopposed bills. In case there is opposition, the committee of selection appoints for its consideration a committee consisting of a chairman and three members not locally or otherwise interested. Before this committee the judicial proceedings take place, at the close of which it is the duty of the committee to report the bill to the house. If the bill has been amended in committee, it is referred to the examiners to "inquire whether the amendments involve any infraction of the standing orders," and three clear days are allowed after the reporting of a bill that those interested in it may acquaint themselves with the changes made in it. The bill has then to pass its final stages in the house of commons and be sent to the house of lords.

In the upper house procedure on private bills is much the same as in the house of commons, and private bills may originate in the house of lords. Formerly bills could not originate in the house of lords if they concerned rates, tolls, or duties; but in order to equalize the pressure of work in the two houses it is now arranged that about half of the private bills shall go first to the lords. Bills which are first brought in in the lords are estate, naturalization, name, and divorce bills, and bills relating to the peerage. Bills which have gone through their judicial stage in a select committee of one house are not put through a similar stage in the other house, and in cases where a private bill has not completed its stages before the rising of parliament, it is now customary to make an order suspending the bill, that it may be proceeded with in the next session of the same parliament.

In the general arrangement and sequence of subjects Messrs. Webster and Grey have made little change in the new volume. Even in cases where some improvement might have been possible, it has been deemed best to keep the old familiar form for the sake of easy reference. Except then for its greater bulk, the present edition of Sir Erskine May's *Parliamentary Practice* differs but little in form and appearance from the one put forward in 1893 by Sir Reginald Palgrave.

ANNIE G. PORRITT.

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American Legislatures and Legislative Methods. By PAUL S. REINSCH, Ph.D. (New York: Century Company. 1907. Pp. 330.)

This work by Dr. Reinsch is the seventh number to appear in the eight volume series on the American State, leaving only the one on The Executive still to be issued. These seven volumes are a valuable addition to our literature on American government. They are at the same time an indication of the increased interest in the development of political science in this country. This series is also noteworthy in that it is distinctly a product of American scholarship and the first comprehensive work of its nature undertaken by American political scientists.

Dr. Reinsch's book is one of the most original and readable in the series. It is written in a frank engaging style. Its tone is dignified and wholesome throughout. The book ought to be very suggestive and valuable to all officials and citizens interested in good government, as well as to the students of the subject. It should be placed in every library and school in the land.

The first chapter is not by the author himself and was evidently written as an afterthought. It is a description of congress on its formal side, prepared by Bernard Steiner.

The two following chapters, one on the house of representatives and the other on the senate give us an interesting account of those telling features of organization and practice that constitute the really vital parts of the complex congressional mechanism. Among other things Dr. Reinsch points out that congress is somewhat different from European parliaments from the fact that it does not possess a full complement of legislative powers. In fact it has next to nothing to do with the enactment of those ordinary civil and criminal laws which govern the relations of individuals in everyday life. Its characteristic work is that of organizing and supplying the needs of the administrative departments, the army and navy, looking after the national forests, the public land, our wards—the Indians, and regulating foreign and interstate commerce. The author continues * * * "Congress is therefore constantly dealing with administrative policies, and it is inevitable that there should be a struggle for influence and power between the president and congress, as well as between the two houses. New channels of public authority are being worn at the present time, the direction of which it seems beyond human contrivance to modify. Men are becoming conscious of the implied logic of our institutions, and are beginning to feel that the organic life of government and the struggle of political entities for predomi-

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nance cannot be confined within the dry principles of the theory of the balance of powers. As yet it is by no means clear in which direction the center of gravity of our political system is bound to settle."

Chapters iii to vii deal largely with the State legislatures. The committee system, procedure, management of finances, apportionments, and elections are the leading topics. The treatment shows how widely and minutely Dr. Reinsch has made his observations.

The best chapters are the last three, entitled Perversion of Legislative Action, Public Forces Influencing Legislative Action, and the Legislative Product. In these chapters the author breaks some new ground and shows what shape and direction the improvements in legislation must take in the immediate future. He calls attention for the first time in a standard work to the importance of the experiments that have recently been made in organizing a permanent bureau of legislation, whose function it shall be to supply busy members with information and assist them in drafting bills.

Dr. Reinsch throws out an interesting suggestion on p. 90, for doing away with a corrupting lobby. Following the practice of some of the administrative councils of Prussia he points out that an open representation of the interests, like the industrial group, the financial, the commercial, the labor, the transportation, and others like education, etc., might bring our system of representation more in harmony with present day solidarity than does our present system based as it is on locality and counted noses. He adds cautiously that such a plan of representation for a legislative body has nowhere as yet been tried.

Every book has its errors and so has the one before us. A few minor ones were detected. On p. 183 the author states that bills are referred to committees "upon the second reading," which of course is not a correct statement of the rule or the practice. On p. 202 in speaking of gerrymandered districts there is an implication that they follow county lines. In South Carolina and other States mentioned the freak districts are made by cutting county lines indiscriminately. Again on p. 325 in the note at the bottom of the page in the third line "object" should read "objection."

WM A. SCHAPER.

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Regulation of Commerce under the Federal Constitution. By THOMAS H. CALVERT. (Northport, N. Y.: Edmond Thompson Company. 1907. Pp. xiv, 380.)

The series of studies in constitutional law in which the present volume appears is an attempt on the coöperative plan to supply the need of a general treatment of American constitutional law. Treatises on special phases of this subject are fairly numerous but the student can turn to no work which adequately covers the whole field. With all the disadvantages incident to the coöperative method the effort to fill in the gap in legal literature will be generally welcomed.

The work under consideration covers what are termed the commerce clauses of the Federal Constitution. A reasonably wide interpretation of the title has been taken and we find that the author is concerned not only with article 1 of section 8, commonly known as the interstate commerce clause, but also with sections 9 and 10 of the same article, relating to imports, exports and duties, as far as they incidentally touch upon commerce. He does not take up the statutes which have been enacted under the power over interstate commerce and consequently the extended discussion of the interstate commerce act, usual in treatments of this subject, is omitted.

The book is divided into three parts; the first of which takes up the general powers of congress and the States; the second, the various subjects of regulation, and the third, State taxation as affecting commerce. This arrangement seems to be a thoroughly practical one, although it involves a certain duplication of treatment between parts 1 and 2; such duplication would, however, probably be necessary in almost any arrangement which could be devised. Mr. Calvert has largely been guided by the decisions in his division of the space allotted but seems to have preserved the balance so that the treatment is in this respect fairly satisfactory.

In the first requisite of a law book, the accurate statement of the decision in each case, no fault can be found with the work. One who uses it can be reasonably sure that the point of each case has been grasped and stated, either in the words of the judge or of the author, in an accurate manner.

A fault which this book has in common with all of the works published by the Edward Thompson Company is the failure to give anything but the official citation for each case. This is not so serious in the case of the supreme court citations for practically every law library has the

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official edition of the supreme court reports. The labor of examining the cases from the State reports is, however, materially increased by the omission of references to the *National Reporter* system, which is the place which the ordinary investigator has at hand for the examination of State cases. It is unfortunate that the commercial rivalry between two publishing houses should impose this additional burden upon the legal profession.

In his failure adequately to state the general principles which underlie the individual decisions the author shows his principal weakness. He is on the whole content to rest his treatment of a subject with the statement of the result reached in each case. Where he does summarize the result of a series of cases he is apt to take his summary from some decision. The formulation of a principle from cases which are not entirely in harmony and the pointing out of the best considered doctrine will be sought in vain.

This failure of many portions of the book to get beyond the digest stage largely diminishes the scientific value of the work. The lawyer is frequently satisfied with a satisfactory index to the cases, making his own selection of those applicable to the case in hand. The political scientist asks rather for a discussion of fundamental principles. The lack of such a discussion will render the work unsatisfactory to him.

An undue insistence upon the relation of the police power to interstate commerce is probably the result of the method employed. The State police power does not in any material way concern the student of interstate commerce. It is true that many of the decisions of the supreme court concerning interstate commerce enter into fairly elaborate discussions of the police power, and Mr. Calvert has simply followed these decisions. His statement of the individual cases is accordingly accurate, but the lack of a general view of the subject gives a somewhat false impression.

This assertion that the police power is not material to a discussion of interstate commerce may possibly be challenged. A careful examination of the various cases will, however, show that the discussions concerning the police power are mere dicta. This is evident when we consider the points involved in the cases concerning the power over interstate commerce. These questions may be resolved into two: Does the act in question affect interstate commerce, and if so, does it do so directly so as to interfere with the exclusive jurisdiction of congress or does it do so only indirectly so that the State can act in the absence of congressional regulation? The answer to the first of these questions obviously

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does not involve a consideration of the police power. The answer to the second might involve the police power if such view of the question had been taken by the supreme court. It is true that many cases seem to indicate that a State acting under the police power may interfere with interstate commerce unless congress has acted on the subject. This principle is not borne out, however, by various other cases. The point may be illustrated by a comparison of certain of the decisions. In Schollenberger v. Pennsylvania, 171 U. S. 1, 18 Sup. Ct. Rep. 757, the oleomargarine law of Pennsylvania was declared inoperative when applied to interstate shipments, although there had been no action of congress upon the subject, while in Powell v. Pennsylvania, 127 U. S. 678, 8 Sup. Ct. Rep. 992, 1257, this same law had been declared a proper exercise of the police power of the State in a case not involving interstate commerce. In Leisy v. Hardin, 135, U. S. 100, 10 Sup. Ct. Rep. 681, the Iowa prohibitory law was declared unconstitutional when applied to interstate shipments of liquor in the original package, although the prohibitory law of Kansas had been upheld in intrastate commerce as a legitimate exercise of the police power, in Mugler v. Kansas, 123 U. S. 623, 8 Sup. Ct. Rep. 623. The statutes of the various southern States requiring separate accommodations for different races are an exercise of the police power as is seen in Plessy v. Ferguson, 163 U. S. 537, 16 Sup. Ct. Rep. 1138. If applied to interstate commerce they would be invalid; Hall v. DeCuir, 95 U. S. 485; Louisville, etc.; Ry. Co. v. Mississippi, 133 U. S. 587, 10 Sup. Ct. Rep. 348; Chesapeake, etc.; R. Co. v. Kentucky, 179, U. S. 388, 21 Sup. Ct. Rep. 101.

The true test is not whether the State statute is enacted under the police power but whether the regulation of interstate commerce is direct or merely incidental so as to fall on one side or the other of the very hazy line of demarcation between the exclusive and the concurrent powers over interstate commerce. In order to sustain the State law as against the fourteenth amendment it must be under some recognized power of the State legislature. That power is frequently the police power which is subordinate to the power of congress over interstate commerce. As was said in New Orleans Gas Co. v. Louisiana Light Co., 115 U. S. 650, 661, 6 Sup. Ct. Rep. 252, "Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise for any purpose whatever, encroach upon the powers of the general government or rights granted or secured by the supreme law of the land." The true test, however, is not whether the State looked to the police power in its enactment but whether the State may act concerning

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interstate commerce in the absence of federal regulation. If congress has acted on the subject under the interstate clause or if the court considers that the action of the State is a direct interference with interstate commerce, the State law under whatever power it may be enacted cannot affect it. "If a law passed by a State in the exercise of its acknowledged powers gets into conflict with that will (of congress) the courts and State cannot occupy the position of equally opposing sovereignties." *In re:* Rahrer, 140 U. S. 545, 555, 11 Sup. Ct. Rep. 865.

The failure to work out general principles of the subject or to show that such principles cannot be deduced from the decisions also affects the treatment of the division between the exclusive and concurrent powers of congress. It may be that the decisions are not such as to allow of the working out of any principles. A thorough treatment of the subject should, however, endeavor to see just where the cases lead us, but Mr. Calvert has contented himself with the vague statement found in Cooley v. Board of Wardens, 12 How. 299, 319, that "Whatever subjects of this power are in their nature national, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by congress," a principle which, although repeated in some later cases, is vague and unsatisfactory, and leads nowhere. His treatment of this subject may be compared with that of James S. Rogers in *American Law Register*, vol. 53, pp. 529, 593.

Subject to the limitations above noted, the work is a thoroughly useful one and cannot be neglected by any student of the subject. The law of interstate commerce is constantly being developed by the courts and a thorough treatise of the subject would perhaps be impossible at the present time. It is to be hoped, however, that the decisions themselves will have more regard for the principles of the subject and that the way will be opened for a complete treatise upon interstate commerce.

JOHN BELL SANBORN.

The Law of Railroad Regulation, with Special Reference to American Legislation. By JOSEPH HENRY BEALE, JR., and BRUCE WYMAN. (Boston: William J. Nagel. 1906. Pp. lii, 1285.)

The scope of this work can best be indicated by giving a brief summary of its contents. After a short introductory chapter which sketches in outline the development of the law of public employments or callings

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in general, some two hundred and fifty pages are devoted to a brief treatment of what lawyers know familiarly as the law of common carriers, the text being divided into two parts bearing respectively the headings: Chief Characteristics of Common Carriage and Primary Duties of Common Carriers. This portion of the work seems intended to be by way of introduction to the remainder of the book. As such, it will be particularly useful to those students of rate regulation who are more familiar with the principles of economics and political science than they are with the law. It should be noted, however, that within those pages the authors are presenting not merely a summary of judicial decisions, but also their theory of the nature of public callings in general, a theory which underlies and gives character to the whole book.

The discussion of the main subject—rate regulation—is divided into two parts, dealing respectively with the regulation of railway rates in accordance with common law principles, and with the regulation of railway rates by legislation. The latter part contains a brief history of statutory regulation, an extended discussion of the interstate commerce act and its interpretation, including procedure before the commission, and a summary of State legislation affecting rates. A brief chapter on the constitutional aspects of rate regulation closes the text. In an appendix are gathered the rules of practice and forms of proceedings before the interstate commerce commission.

This description of the contents of the book will show that the authors have covered a field not hitherto covered, at least by any single work, and although it bears many traces of the haste with which it was prepared, the book is well done and will be of great service to all who have to deal with the subject. An examination of the index seems to show that it is not adequate, many important headings being omitted altogether, and it is to be hoped that in another edition this and some other minor defects will be remedied.

A word now as to the underlying theory of the book, referred to above. According to the authors, all businesses are divided into public businesses and private businesses, and the line of division depends upon whether or not in a particular business there exists a permanent condition of virtual monopoly, due either to the character of the business or other reasons. Their conclusions seem to be summed up in the following paragraph:

"If virtual monopoly is made out as the permanent condition of affairs in a given business, then the law, it seems, will consider that calling public in its nature; on the other hand, if effective competition is proved

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as the regular course of things in a given industry, the law will hold all businesses within it as private in their character. Under our constitutional system a distinction is made upon this line. In the public calling, regulation of service, facilities, prices, and discriminations is possible to any extent. Monopolistic conditions demand such policy; and at no period in history has this been more apparent than now. In the private callings no such legislation should be permitted. Competitive conditions require freedom, and at no epoch in our industries has it been more important to insist upon this. But wherever there is virtual monopoly in a business of public importance at any time and from any cause, the protection of the law is requisite, requiring that all shall be served at reasonable rates."

Concerning this, it may be said that while it is doubtless true that all businesses in which virtual monopoly exists may, constitutionally, be regulated, it does not seem to follow, and the authors have not demonstrated, that no other businesses may be regulated. In discussing the question, two questions should be kept clearly separated; first, what callings by the principles of the common law have been held by the courts to be public callings and so subject to certain exceptional rules of liability; second—an entirely distinct question—how far may the legislature go, under our constitutions, in regulating businesses not previously regulated, or in regulating in new ways businesses previously subjected to control by the principles of the common law just referred to. It may well be that the common law judges, in laying down these principles of the common law, drew the line in the manner suggested by the authors, that is, by putting those callings in which virtual monopoly existed into one class and all others into another. Even granting this for the sake of argument, it by no means follows that the line between unconstitutional and constitutional regulations must be drawn in the same way. To contend that it must be so drawn is to make the unwarranted assumption that no other reasonable grounds for regulation can be found, for clearly if other reasonable grounds can be found, regulations would be constitutional. If the welfare of the community demands it, surely a business, hitherto unregulated, may be subjected to regulation even if the necessity for regulation depends on some other condition than the existence of virtual monopoly. That such may be the case seems clearly to be the view of the supreme court of the United States in Brass v. North Dakota, 153 U. S., 391, where the majority of the court expressly said that the right of the State to regulate grain elevators did not depend upon the existence of virtual monopoly at all,

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but upon the fact that it was a "business affected with a public interest," which, being interpreted, seems to mean nothing more than that the welfare of society required the regulation of the business in question, or at best that that was a reasonable view to take and therefore the regulation was not unconstitutional.

In view of the fact that they cite Munn v. Illinois as supporting the virtual monopoly test, and also in view of the fact that the authors were obviously not unaware of the North Dakota case (see Beale and Wyman's *Cases on Public Service Companies*), the suppression of all reference to the latter case (which says that the decision in Munn v. Illinois is not to be understood as laying down the virtual monopoly test), seems to indicate that they are occupied at this point in supporting a theory rather than in stating the law as it is. Be this as it may, the reader who is not a lawyer should be put on his guard against accepting as settled this proposition of the authors. It may be that ultimately it will become the law—though the present writer sincerely hopes not; it may be that some or many State courts would act upon it today; but to assert that the line has been drawn at this point is to ignore both the decision referred to and—what seems greater in importance—the whole trend of the decisions and opinions of the United States Supreme Court and some of our State courts.

WALTER WHEELER COOK.

Our State Constitutions. BY J. Q. DEALEY. (Philadelphia: American Academy of Political and Social Science. 1907. Pp. 98.)

This study, by Prof. James Quayle Dealey of Brown University, is a valuable monograph which is published as a supplement to the *Annals of the American Academy of Political and Social Science* for March, 1907. It is a comparison of constitutions as they stood at the close of the year 1905, and it is intended as a guide to the study of the fundamental law of the States, a purpose which it is well calculated to serve. Its 98 pages give a digest of the contents of State constitutions arranged by topics, so that the various provisions made by different States on the same subjects are contrasted, and reference is facilitated by a full index. It is a thoroughly good piece of work which is so serviceable as to lay all students of American institutions under obligations to Professor Dealey for performing what must have been a laborious task. Indeed, the work is so useful as a convenient manual that another edition to complete it by including the constitution of Oklahoma is desirable.

HENRY JONES FORD.

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Robert Owen, A Biography. By FRANK PODMORE. Two volumes. (New York: D. Appleton and Company, 1907. Pp. xv, xii, 688.)

Much of Robert Owen's work seemed to end in failure. His great social experiments at New Lanark and at New Harmony, neither of them stood the test of time. His writings were of little value, and are now completely forgotten. His religious, or rather anti-religious views have passed into the limbo of forgotten things; and it might appear as though his life had been of little account in the social and moral progress of the nineteenth century. In fact the world has been ready to make this assumption, and it is only within the last two or three years that, after fifty years of neglect and even of contumely, attention has again been directed to the real accomplishment of this great and long misjudged man. Had Owen died before the twenty-first of August, 1817, when he was forty-six years of age, popular, prosperous, held in high honor by the bulk of the respectable class and by the most influential portion of the London press, and enjoying even the cordial respect and sympathy of many amongst the political economists and reformers who were definitely opposed to him, there would probably have been much written about him, and he would have enjoyed a high reputation for enlightened philanthropy through the whole of the nineteenth century. But after his memorable and outspoken denunciation of all the religions of the world in the public meeting of August 21, 1817, his reputation and worldly prosperity began to decline. He gradually relinquished the management of the mills at New Lanark, though he did not sever his connection with them until 1828. From this time Owen devoted his life to propaganda on behalf of his socialistic theories, of which propaganda the New Harmony venture was the most ambitious and most expensive item. Thenceforth the name of Robert Owen was taboo to all respectable churchmen and politicians, and the enemies of the factory bill of 1818 endeavored to discredit this mild instalment of reform by reminding the house of commons that the measure had originated, not with Sir Robert Peel who had introduced it, but with Robert Owen. Hence it is that fifty years passed after his death without any adequate biography of this leader of English thought, and only since the opening of the present century has attention once more been directed to his work.

Since 1902, however, four writers, a Frenchman, an American, a German lady and an Englishman have each published a book on Robert Owen. Mr. G. B. Lockwood's work, which was the first to appear, covered only the New Harmony experiment. The German life of Owen

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by Fräulein Simon, and the French biography, by M. Dolléans, both appeared in 1905, and Mr. Podmore's two volumes form at the present time the last of this new series and the only satisfactory English biography of Robert Owen. Mr. Podmore is a frank admirer of the character, the disinterestedness and the noble optimism of Robert Owen; but he is an equally candid critic of his many intellectual deficiencies.

The crudeness of his ideas; his lack of acquaintance with the works of any of the great thinkers, ancient or contemporary; the domination of his mind by one idea, and his consequent uncompromising directness and self-sufficiency, are all deliberately emphasized. But these faults were incompetent to destroy the influence which Owen wielded through his living optimism, his unselfishness, his love for his fellow creatures, and his untiring faith in the possibility of human progress. "With Owen," Mr. Podmore writes, "that faith burned generous and uncontrollable as the sun, and like the sun most of its light and heat might seem to have run to waste. Perhaps his claim to our remembrance lies less in the things he did—substantial though his achievements were—than in the hopes which he inspired, the faith which his example kept alive. For the sun of that faith was never shorn of a single ray. When he published his *New View of Society*, he looked for the regeneration of the world to begin on the morrow; throughout his long life that high vision, ever receding as he advanced, was still before his eyes; and he died at the age of eighty-seven happy in the belief that the millenium was even then knocking at the door."

The ideals, for which Owen stood, suffered eclipse through the middle years of the nineteenth century when the Manchester school of political economy was dominant. But at the opening of the twentieth century, as at the opening of the nineteenth, the discontent with the present order of things and the divine impatience with the injustice and misery suffered by so many of their fellow creatures are turning the thought of reformers and enthusiasts again to socialism as a remedy, and thus it is not without significance that within five years, after almost forty years of neglect, Owen should find a biographer in each of the four greatest countries of the world. As for Mr. Podmore's share in this work, the *Life of Robert Owen* was worth doing, and he has done it well. He has given a more vivid picture of the man than could have been expected, considering the remoteness of his subject and the scantiness of his material, and he has outlined Owen's opinions and theories clearly, modestly and without dogmatism.

A. G. Porritt.

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[1] The references to periodical articles are kindly furnished by Dr. Horace E. Flack.

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